COMMERCE COUNCIL MEETING PACKET

Tuesday, April 11, 2006
3:30 – 5:30 P.M.
Room 404 - HOB

Allan G. Bense
Speaker

Frank Farkas
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Commerce Council

Start Date and Time:	Tuesday, April 11, 2006 03:30 pm
End Date and Time:	Tuesday, April 11, 2006 05:30 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 159 CS Regulation of Real Estate Appraisers by McInvale
HB 299 CS Travel-Limited Life Insurance Coverage by Sobel
HB 531 CS Prosperity Campaigns by Jennings
HM 541 National Catastrophe Insurance Program by Ross
HB 661 CS Governmental Services Telephone Systems by Arza
HB 667 CS Credit Counseling Services by Hasner
HB 789 CS Damage Prevention and Safety for Underground Facilities by Murzin
HB 817 CS Telecommunications Carriers of Last Resort by Murzin
HB 821 CS Community Contribution Tax Credit Program by Goodlette
HB 825 CS Financial Literacy Council by Altman
HB 1135 CS Practice of Architecture and Interior Design by Hukill
HB 1211 CS Notification Regarding the State Minimum Wage by Fields
HB 1367 Contracting Exemptions by Evers

NOTICE FINALIZED on 04/07/2006 15:11 by GLATFELTER.SUKIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 159 CS Regulation of Real Estate Appraisers
SPONSOR(S): McInvale and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	15 Y, 0 N, w/CS	Livingston	Liepshutz
2) State Administration Appropriations Committee	9 Y, 0 N	Rayman	Belcher
3) Commerce Council		Livingston	Randle
4)			
5)			

SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (board) under the Division of Real Estate within the Department of Business and Professional Regulation (DBPR) administers regulation of real estate appraisers. The bill addresses several provisions of the real estate appraisers' statutes, part II of chapter 475, F.S.

The Appraisal Qualifications Board ("AQB") acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. A person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The bill requires the board to prescribe by rule education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the AQB in order to be qualified as a "residential appraiser" or as a "general appraiser."

The bill specifies the duties for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision" and "training" and amends the definition of "supervisory appraiser." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill prohibits a supervising appraiser from being employed by a person who is in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a gradual phase out of this regulatory category. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category. The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to currently licensed individuals.

This bill does not appear to have a significant fiscal impact on state government.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Expand individual freedom - The bill prohibits a supervising appraiser from being employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

B. EFFECT OF PROPOSED CHANGES:

Background

Regulation of real estate appraisers is established under part II of chapter 475, F.S. The board under the Division of Real Estate of the DBPR administers this program. Regulation is designed to assure the minimal competency of real estate appraisers in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Several themes are prevalent in the bill and are supported by various changes to statutory text.

Compliance with changing federal standards

Present Situation

The definitions section of part II of chapter 475, F.S., provides that an "appraisal report" is "any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specific interest in, or aspect of, identified real property...." The definition specifically states, "However, in order to be recognized in a federally related transaction, an appraisal report must be written."

"Federally related transaction" is defined as "any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser." Additionally, "appraisal foundation" or "foundation" is defined by statute to mean "the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois."

The Appraisal Qualifications Board ("AQB") is located within the Appraisal Foundation and acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. Therefore, a person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The AQB has adopted changes that will become effective January 1, 2008, to the minimum qualification criteria for appraisers.

Effect of proposed changes

In order to be qualified as a certified "residential appraiser" or as a "general appraiser," the bill requires the applicant to present evidence that he or she "has met the minimum education and experience requirements prescribed by rule of the board." The bill requires the board to "prescribe by rule education and experience requirements that meet or exceed the real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation." These provisions are designed to allow changes at the state level to reflect future

changes in federal qualifications for licensure which will be based upon those already adopted by the AQB.

The bill increases the statutory number of classroom hours of academic courses that are required to be certified. The changes include an increase from 120 classroom hours to 200 for a residential appraiser and an increase from 180 classroom hours to 300 for a general appraiser. The bill also increases the number of hours for a trainee appraiser from 75 hours to 100.

Supervisor/trainee direct supervision requirements

Present Situation

The current definition section of part II of chapter 475, F.S., defines "supervisory appraiser" to mean a licensed appraiser or a certified residential or general appraiser who directs the supervision of one or more registered "trainees." The definition, gives the board rule authority to limit the number of trainees whose work a supervisor may oversee and limit, by rule, the geographic area within which a supervisor may work. The terms "direct supervision" and "training" are not currently defined.

Section 475.6221, F.S., requires "the primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser."

Effect of proposed changes

The bill specifies requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision" and "training" and amends "supervisory appraiser." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill defines "direct supervision" as "the degree of supervision overseeing the work of a registered trainee appraiser" [allowing] "control over and detailed professional knowledge of the work being done." The definition continues and provides that "direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board."

The bill defines "training" to mean "the process of providing for and making available to a registered trainee appraiser, under direct supervision" [which is newly defined in the bill], "a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical skills as determined by rule of the board."

Supervisor/trainee business relationship restrictions

Present Situation

In addition to the direct supervision requirements noted above, s. 475.6221, F.S., also requires that "a registered trainee real estate appraiser may only receive compensation through or from the primary supervisory appraiser."

Effect of proposed changes

The bill amends s. 475.6221, F.S., to prohibit a supervising appraiser to be employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

The bill also amends s. 475.612, F.S., to repeat the requirement that "a registered trainee appraiser may only receive compensation from his or her authorized certified or licensed appraiser."

Regulatory nomenclature

Present situation

Section 475.612, F.S., currently prohibits a person from using the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to that effect, or issue an appraisal report "in connection with any federally related transaction" unless that person is certified, licensed, or registered by the DBPR.

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a phase out of this regulatory category. The definition provisions prohibit the DBPR from issuing any more licenses for the licensed appraiser category after July 1, 2003. The renewal of licenses would continue but no new licenses will be issued. Reference to the term license would continue until all licenses expire for failure to renew or are revoked under disciplinary proceedings. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category.

Effect of proposed changes

The bill deletes the reference "in connection with any federally related transaction" and, as a result, the prohibition against using the specified titles of "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," would apply to all real estate appraisal transactions.

The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to the dwindling universe of these licensed practitioners. Effective July 1, 2006, an applicant must provide fingerprints in electronic format.

C. SECTION DIRECTORY:

Section 1. Amends s. 475.611, F.S., relating to definitions; creates definitions for "direct supervision" and "training" and amends "supervisory appraiser."

Section 2. Amends s. 475.612, F.S., to address reporting and valuation services, as well as, the direct payment of compensation to certified or licensed appraisers.

Section 3. Amends s. 475.615, F.S., to revise qualifications for registration or certification.

Section 4. Amends s. 475.616, F.S., to correct references.

Section 5. Amends s. 475.617, F.S., to address education and experience requirements and to increase the required number of classroom hours.

Section 6. Creates s. 475.6171, F.S., to summarize the requirements for registration and certification.

Section 7. Amends s. 475.6221, F.S., to prohibit a trainee from employing a supervisory appraiser.

Section 8. Amends s. 475.6222, F.S., to require a primary or secondary supervisor appraiser to provide training, in addition to direct supervision, to an appraiser trainee.

Section 9. Amends s. 475.623, F.S., to require registration of a firm or business name in addition to the location of their operations.

Section 10. Amends s. 475.624, F.S., to correct references.

Section 11. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None anticipated.

2. Expenditures:

   None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a minimal effect on how certain licensees structure their business entities.

D. FISCAL COMMENTS:

There is no significant fiscal impact to the DBPR.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill specifically authorizes rules to be adopted by the board to support:
the definition of "direct supervision" and "training", s.475.611, F.S.; the implementation of changing federal guidelines, s.475.615 and s. 475.617, F.S.; and the documentation for qualifying to be registered or certified, 475.6171, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Business Regulation Committee adopted a strike all amendment on January 26, 2006, and passed the bill by a unanimous vote. The CS differs from the original bill as follows.

- The CS inserts the reference to "by rule" in several provisions to clarify rule authority of the board.
- It requires fingerprints to be submitted in electronic form starting on July 1, 2006.
- It increases the required number of classroom hours for a trainee, residential, and general appraiser.
- The CS corrects several references to the term license where the phasing out of this classification is appropriate.

The staff analysis reflects the CS.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to regulation of real estate appraisers; amending s. 475.611, F.S.; revising and providing definitions; amending s. 475.612, F.S.; revising requirements relating to work performed by persons who are not certified, licensed, or registered; providing requirements relating to issuance of appraisal reports and compensation of appraisers, including trainees; amending s. 475.615, F.S.; removing obsolete language relating to qualifications for registration, licensure, or certification; revising education and experience requirements; amending s. 475.616, F.S.; removing obsolete language relating to examination requirements; amending s. 475.617, F.S.; revising the minimum and maximum course hour requirements for trainee appraiser registration; removing obsolete provisions establishing education and experience requirements for licensure as an appraiser; revising education and experience requirements for certification as a residential appraiser or general

appraiser; requiring applicants for certification to maintain certain application documents; providing rulemaking authority; creating s. 475.6171, F.S.; providing for the issuance of registration and certification upon receipt of proper documentation; providing rulemaking authority; amending s. 475.6221, F.S.; prohibiting supervisory appraisers from certain employment; amending s. 475.6222, F.S.; requiring supervisory appraisers to provide direct training to registered trainee appraisers; amending s. 475.623, F.S.; requiring appraisers to furnish their firm or business name and any change in that name to the Department of Business and Professional Regulation; amending s. 475.624, F.S.; removing obsolete references; correcting cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.--

(1) As used in this part, the term:

(a) "Appraisal" or "appraisal services" means the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a

disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.

3. "Appraisal review assignment" denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

(b) "Appraisal Foundation" or "foundation" means the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) "Appraisal report" means any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property, and includes any report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

(d) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's appraisal, appraisal report, or work.

(e) "Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

(f) "Appraiser" means any person who is a registered trainee real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(g) "Board" means the Florida Real Estate Appraisal Board established under this section.

(h) "Certified general appraiser" means a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

(i) "Certified residential appraiser" means a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(j) "Department" means the Department of Business and Professional Regulation.

(k) "Direct supervision" means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work

being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

(l) ~~(k)~~ "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

(m) ~~(l)~~ "Licensed appraiser" means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

(n) ~~(m)~~ "Registered trainee appraiser" means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

(o) ~~(n)~~ "Supervisory appraiser" means a licensed appraiser, a certified residential appraiser, or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the

responsibilities of a supervisory appraiser, the geographic proximity required, the minimum qualifications and standards required of a licensed or certified appraiser before she or he may act in the capacity of a supervisory appraiser, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

(p) "Training" means the process of providing for and making available to a registered trainee appraiser, under direct supervision, a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical appraisal skills as determined by rule of the board.

(q) ~~(o)~~ "Uniform Standards of Professional Appraisal Practice" means the most recent standards approved and adopted by the Appraisal Standards Board of the Appraisal Foundation.

(r) ~~(p)~~ "Valuation services" means services pertaining to aspects of property value and includes such services performed by certified appraisers, registered trainee appraisers, and others.

(s) ~~(q)~~ "Work file" means the documentation necessary to support an appraiser's analysis, opinions, and conclusions.

Section 2. Section 475.612, Florida Statutes, is amended to read:

475.612 Certification, licensure, or registration required.--

(1) A person may not use the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to

that effect, or issue an appraisal report ~~in connection with any federally related transaction~~, unless such person is certified, licensed, or registered by the department under this part. However, the work upon which an appraisal report is based may be performed by a person who is not a certified or licensed appraiser or registered trainee appraiser if the work ~~report~~ is supervised and approved, and the report is signed, by a certified or licensed appraiser who has full responsibility for all requirements of the report and valuation service. Only a certified or licensed appraiser may issue an appraisal report and receive direct compensation for providing valuation services for the appraisal report. A registered trainee appraiser may only receive compensation for appraisal services from her or his authorized certified or licensed appraiser.

(2) This section does not preclude a Florida licensed real estate broker, sales associate, or broker associate who is not a Florida certified or licensed real estate appraiser ~~or registered trainee real estate appraiser~~ from providing valuation services for compensation. Such persons may continue to provide valuation services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.

(3) This section does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a price opinion, or gives an opinion of the value of real estate. However, in no event may this comparative market analysis, price opinion, or

opinion of value of real estate be referred to or construed as an appraisal.

(4) This section does not prevent any state court or administrative law judge from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, or registered; nor does it prevent any appraiser from testifying, with respect to the results of an appraisal.

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified or licensed appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual <u>who is responsible for the report's content</u>.

(6) This section does not apply to any employee of a local, state, or federal agency who performs appraisal services within the scope of her or his employment. However, this exemption does not apply where any local, state, or federal agency requires an employee to be registered, licensed, or certified to perform appraisal services.

Section 3. Section 475.615, Florida Statutes, is amended to read:

475.615 Qualifications for registration~~, licensure,~~ or certification.--

(1) Any person desiring to act as a registered trainee appraiser or as a ~~licensed or~~ certified appraiser must make

application in writing to the department in such form and detail as the board shall prescribe. Each applicant must be at least 18 years of age and hold a high school diploma or its equivalent. ~~At the time of application, a person must furnish evidence of successful completion of required education and evidence of required experience, if any.~~

(2) The board is authorized to waive or modify any education, experience, or examination requirements established in this part in order to conform with any such requirements established by the Appraisal Qualifications Board of the Appraisal Foundation ~~and recognized by the Appraisal Subcommittee~~ or any successor body recognized by federal law, including any requirements adopted on February 20, 2004. The board shall implement this section by rule.

(3) Appropriate fees, as set forth in the rules of the board pursuant to s. 475.6147, and a fingerprint card must accompany all applications for registration or, ~~,~~ certification, ~~or licensure~~. The fingerprint card shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The fingerprint card shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprint card by the ~~Florida~~ Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the

applicant is statutorily qualified for registration or~~,~~ certification~~, or licensure~~. Effective July 1, 2006, an applicant must provide fingerprints in electronic format.

(4) In the event that the applicant is currently a registered trainee appraiser or a licensed or certified appraiser and is making application to obtain a different status of appraisal credential ~~licensure~~, should such application be received by the department within 180 days prior to through 180 days after the applicant's scheduled renewal, the charge for the application shall be established by the rules of the board pursuant to s. 475.6147.

(5) At the time of filing a notarized application for registration~~, licensure,~~ or certification, the applicant must sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice upon registration~~, licensure,~~ or certification~~,~~ and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application shall expire 1 year after ~~from~~ the date received~~, if the applicant for registration, licensure, or certification fails to take the appropriate examination~~.

(6) All applicants must be competent and qualified to make real estate appraisals with safety to those with whom they may undertake a relationship of trust and confidence and the general public. If any applicant has been denied registration, licensure, or certification, or has been disbarred, or the applicant's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been

revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this part, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee appraiser or a licensed or certified appraiser, the applicant shall be deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration~~, licensure,~~ or certification.

(7) No applicant seeking to become registered~~, licensed,~~ or certified under this part may be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

Section 4. Section 475.616, Florida Statutes, is amended to read:

475.616 Examination requirements.--To be ~~licensed or~~ certified as an appraiser, the applicant must demonstrate, by passing a written examination, that she or he possesses:

(1) A knowledge of technical terms commonly used in real estate appraisal.

(2) An understanding of the principles of land economics, real estate appraisal processes, reliable sources of appraising data, and problems likely to be encountered in the gathering,

interpreting, and processing of data in carrying out appraisal disciplines.

(3) An understanding of the standards for the development and communication of real estate appraisals as provided in this part.

(4) An understanding of the types of misconduct for which disciplinary proceedings may be initiated against a licensed or certified appraiser, as set forth in this part.

(5) Knowledge of the theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal ~~that are appropriate for the licensure or certification for which application is made~~.

Section 5. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.--

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 ~~75~~ hours of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 ~~100~~ hours. A classroom hour is defined as 50 minutes out of each 60-

minute segment. Past courses may be approved on an hour-for-hour basis.

~~(2) To be licensed as an appraiser, an applicant must present evidence satisfactory to the board that she or he:~~

~~(a) Has 2 years of experience in real property appraisal as defined by rule.~~

~~(b) Has successfully completed at least 90 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 120 hours. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.~~

(2) ~~(3)~~ To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 ~~120~~ classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a 15-hour National ~~coverage of the~~ Uniform Standards of Professional Appraisal Practice course from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. ~~The board may increase the required number of hours to not more than 165 hours.~~ A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) ~~(4)~~ To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 300 ~~180~~ classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a

15-hour National ~~coverage of the~~ Uniform Standards of Professional Appraisal Practice course from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. ~~The board may increase the required number of hours to not more than 225 hours.~~ A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(4) ~~(5)~~ Each applicant must furnish, under oath, a detailed statement of the experience for each year of experience she or he claims. Upon request, the applicant shall furnish to the board, for its examination, copies of appraisal reports or file memoranda to support the claim for experience. Any appraisal report or file memoranda used to support a claim for experience must be maintained by the applicant for no less than 5 years after the date of certification.

(5) The board may implement the provisions of this section by rule.

Section 6. Section 475.6171, Florida Statutes, is created to read:

475.6171 Issuance of registration or certification.--The registration or certification of an applicant may be issued upon receipt by the board of the following:

(1) A complete application indicating compliance with qualifications as specified in s. 475.615.

(2) Proof of successful course completion as specified in s. 475.617.

(3) Proof of experience for certification as specified in s. 475.617.

(4) If required, proof of passing a written examination as specified in s. 475.616. No certification shall be issued based upon any examination results obtained more than 24 months after the date of examination.

(5) The board shall implement this section by rule.

Section 7. Subsection (3) is added to section 475.6221, Florida Statutes, to read:

475.6221 Employment of and by registered trainee real estate appraisers.--

(3) A supervisory appraiser may not be employed by a trainee or by a corporation, partnership, firm, or group in which the trainee has a controlling interest.

Section 8. Section 475.6222, Florida Statutes, is amended to read:

475.6222 Supervision and training of registered trainee appraisers.--The primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser. The role and responsibility of the supervisory appraiser is determined by rule of the board.

Section 9. Section 475.623, Florida Statutes, is amended to read:

475.623 Registration of firm or business name and office location.--Each appraiser registered, licensed, or certified

under this part shall furnish in writing to the department each firm or business name and address from which she or he operates in the performance of appraisal services. Each appraiser must notify the department of any change of firm or business name and any change of address within 10 days on a form provided by the department.

Section 10. Section 475.624, Florida Statutes, is amended to read:

475.624 Discipline.--The board may deny an application for registration~~, licensure,~~ or certification; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed $5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if it finds that the registered trainee, licensee, or certificateholder:

(1) Has violated any provisions of this part or s. 455.227(1); however, certificateholders, registrants, and licensees under this part are exempt from the provisions of s. 455.227(1)(i).

(2) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or

implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the registered trainee, licensee, or certificateholder that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the registered trainee, licensee, or certificateholder, or was an identified member of the general public.

(3) Has advertised services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(4) Has violated any of the provisions of this part ~~section~~ or any lawful order or rule issued under the provisions of this part ~~section~~ or chapter 455.

(5) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a registered trainee appraiser or licensed or certified appraiser, or which involves moral turpitude or fraudulent or dishonest conduct. The record of a conviction certified or authenticated in such form as admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(6) Has had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against, or has been disbarred, or has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(7) Has become temporarily incapacitated from acting as an appraiser with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however, suspension of a license, certification, or registration in such cases shall only be for the period of such incapacity.

(8) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(9) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(10) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice which shows that she

or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

(11) Has made or filed a report or record, either written or oral, which the registered trainee, licensee, or certificateholder knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those which are signed or presented in the capacity of a registered trainee appraiser or licensed or certified appraiser.

(12) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.

(13) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.

(14) Has violated any standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

(15) Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

(16) Has failed to communicate an appraisal without good cause.

(17) Has accepted an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(18) Has failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which she or he operates as a registered trainee real estate appraiser or licensed or certified real estate appraiser.

Section 11. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 299 CS Travel-Limited Life Insurance Coverage
SPONSOR(S): Sobel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	19 Y, 0 N, w/CS	Cooper	Cooper
2) Tourism Committee	6 Y, 1 N	McDonald	McDonald
3) Transportation & Economic Development Appropriations Committee	15 Y, 0 N, w/CS	McAuliffe	Gordon
4) Commerce Council		Cooper	Randle
5)			

SUMMARY ANALYSIS

The offering and sale of insurance in Florida, including life insurance, are governed by the provisions of the "Florida Insurance Code." Before insurers deliver a policy or application form in the state they must file the form for approval by the Office of Insurance Regulation. Subsequent to approval, insurers' trade practices relating to the business of insurance are regulated pursuant to Part IX of Chapter 626. F.S. entitled "Unfair Insurance Trade Practices Act." The purpose of this part is to define, or to provide for the determination of, practices which constitute unfair methods of competition or unfair or deceptive acts and prohibiting such practices.

Recently, insurance regulators in several states, including Florida, have expressed concern about some life insurance companies denying life insurance to individuals based on a person's past or future travel plans. Although, according to the Office of Insurance Regulation such practices may be illegal in Florida under existing law, there is currently no express specific statutory prohibition against such acts.

This bill creates a new unfair or deceptive trade practice provision under the Insurance Code (s. 626.9541, F.S.) which would prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's past lawful foreign travel experiences. The bill would further prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's future lawful foreign travel plans, unless life insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel. The bill provides authority for the Financial Services Commission (Governor and Cabinet) to develop rules to implement these provisions and provides authority to the Commission to allow for limited exceptions based on national or international emergency conditions affecting public health, safety and welfare and that are consistent with public policy.

This bill does not have a fiscal impact on state or local government.

This bill takes effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill prohibits life insurers from denying or modifying coverage solely for reasons associated with an applicant's or insured's past or future lawful travel experiences.

Safeguard Individual Liberty – This bill will increase lawful foreign travel options for individuals. People of the Christian, Moslem and Jewish faith, among others, may have greater opportunities to travel to lands having cultural and religious importance to them.

Empower Families – With the provisions contained in this bill, families may have more options to engage in lawful travel activities.

B. EFFECT OF PROPOSED CHANGES:

Regulation of Life Insurance/Current Insurance Practices

Section 624.602, F. S. defines "Life insurance" as "insurance of human lives." Life insurance indemnifies against loss due to the death of a particular person upon whose death the insurance company agrees to pay a stated sum or income to the beneficiary. The transaction of life insurance also includes the granting of annuity contracts, including, but not limited to, fixed or variable annuity contracts; the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability; and optional modes of settlement of proceeds of life insurance.

In Florida, the Office of Insurance Regulation (OIR) has primary responsibility for regulation, compliance and enforcement of statutes related to the business of insurance, and the monitoring of industry markets. The office provides regulatory oversight of company solvency, policy forms and rates, market conduct performance and new company entrants to the Florida market

Before any life insurance policy or application form is delivered in Florida the form must be filed with, and approved by, OIR.[1] As each filing is received, it is reviewed to determine compliance with applicable actuarial standards, statutory provisions, and administrative rules. Under current law, OIR is authorized to disapprove any form which, in addition to other reasons, is inconsistent, ambiguous, misleading, or deceptive.[2]

Once an insurer begins selling policies in the state, it is governed by, among other statues and rules, the provisions of the "Unfair Insurance Trade Practices Act." The purpose of this part is to define, or to provide for the determination of, practices which constitute unfair methods of competition or unfair or deceptive acts and prohibiting such practices. [3]

In 2005, OIR became aware that some life insurance companies were denying life insurance coverage based on possible travel plans to certain foreign countries.[4] In one instance, a policy was not approved

[1] s. 627.410, F.S.
[2] s. 627.411, F.S.
[3] s. 626.9541, F.S.
[4] Some companies have used the U.S. Department of State's Current Travel Warnings in their determinations. Travel Warnings are issued when the State Department recommends that Americans avoid a certain country. The countries listed below are currently on that list. In addition to this list, the State Department issues Consular Information Sheets for

because of an applicant's "potential travel to Israel."[5] Upon further investigation, OIR determined that nine insurers had filed questionnaires with their application forms in which they asked about either past travel outside of the United States and/or whether the applicant intended to travel outside the United States in the future. The Office of Insurance Regulation contacted those insurers and those application forms were withdrawn.[6]

To prevent similar application forms from being used in the future, OIR initiated the rulemaking process to enact an administrative rule to specifically define as an unfair trade practice the exercise of unfair discrimination based on a person's future intent to engage in lawful travel. The rule (which also applies to annuity contracts, accident, disability or health insurance) prohibits an insurance company from refusing to issue policies solely because of the intent to engage in future lawful foreign travel or based upon past travel, unless the insurer can demonstrate that insureds are a separately actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.[7]

The Office of Insurance Regulation relies on s.626.9541(1)(g), F.S., a provision in the "Unfair Insurance Trade Practices Act," as the statutory authority for their proposed rule. The subsection reads:

> 1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.-- The following are defined as unfair methods of competition and unfair or deceptive acts or practices:
>
> (g) Unfair discrimination.—
>
> 1. Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

Having gone through the workshop and public hearing process, the proposed rule is now scheduled for final public hearing and adoption by the Financial Services Commission (comprised of the Governor and the Cabinet) on March 16, 2006.

Situation in Other States

Other states have addressed the issue of denying life insurance coverage based on past or future travel plans. States which have enacted laws restricting denials based upon past travel plans include New York, Maryland and Illinois.

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every country of the world with information on such matters as the health conditions, crime, unusual currency or entry requirements, any areas of instability, and the location of the nearest U.S. embassy or consulate in the subject country. The following countries are currently on the list: Democratic Republic of the Congo, Nigeria, Colombia, Afghanistan, Kenya, Iran, Iraq, Saudi Arabia, Nepal, Haiti, Indonesia, Zimbabwe, Lebanon, Liberia, Yemen, Burundi, Cote d'Ivoirre, Sudan, Bosnia-Herzegovina, Somalia, Algeria, Uzbekistan, Israel, the West Bank and Gaza, Central African Republic, Pakistan, and the Philippines. *See* Current Travel Warnings, available at http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html, viewed on January 24, 2006.

[5] Letter to Congresswoman Debbie Wasserman-Schultz from a representative of American General Life Insurance Company (AIG), March 28, 2005, on file with the Insurance Committee.

[6] Letter to Congresswoman Debbie Wasserman-Schultz from Kevin M. McCarty, Commissioner, Office of Insurance Regulation, on file with the Insurance Committee.

[7] Proposed amendments to Rule 690-125.003, Florida Administrative Code, published on November 23, 2005, in Vol.31, No. 47 of the *Florida Administrative Weekly.*

New York Insurance Law § 2614 provides that no life insurer shall make any distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for reasons associated with an applicant's or insured's past lawful travel experiences.[8] Maryland and Illinois both have the same provision prohibiting a life insurance company from refusing to insure, refusing to continue to insure, limiting the amount or extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's past lawful travel experiences. [9]

States which have passed laws addressing the practice of insurance companies basing their coverage decisions upon applicants' past or future travel plans include Washington and California. In 2005, Washington passed a law which prevents insurance companies from discriminating against travelers for lawful travel by canceling or denying travelers life insurance because of past or future lawful travel. The law does allow a life insurer to exclude or limit coverage of specific lawful travel, or to charge a differential rate for such coverage, when bona fide statistical differences in risk or exposure have been substantiated.[10]

The state which has addressed this issue most recently is California. Although California's law is the same as Washington's in what it expressly prohibits, it also clarifies that it does not prohibit an insurer from excluding or limiting coverage under a life insurance policy, or refusing to offer life insurance, based upon lawful travel, or from charging a different rate for that coverage, when that action is based upon sound actuarial principles or is related to actual and reasonably expected experience.[11]

Changes Proposed by the Bill

This bill amends s. 626.9541, F.S., the Unfair Methods of Competition and Unfair or Deceptive Act, by creating a new unfair or deceptive trade provision ("dd"). The legislation would prohibit life insurers from refusing life insurance to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences. The bill would further prohibit life insurers from refusing coverage to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful foreign travel plans, unless the insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel.

The bill provides authority for the Financial Services Commission (Governor and Cabinet) to develop rules to implement these provisions and provides authority to the Commission to allow for limited exceptions based on national or international emergency conditions affecting public health, safety and welfare and that are consistent with public policy.

C. SECTION DIRECTORY:

Section 1. States that the act may be cited as "The Freedom to Travel Act."

Section 2. Amends s. 626.9541, F.S., the Unfair Methods of Competition and Unfair or Deceptive Act, by creating a new unfair or deceptive trade provision ("dd").

Section 3. Provides an effective date of July 1, 2006.

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[8]State of New York Insurance Department, Opinion issued by the Office of General Counsel Re: Life Insurance Underwriting, filed on May 25, 2005, available at http://www.ins.state.ny.us/rg050526.htm, viewed on January 19, 2006.

[9] House Bill 617(Maryland), 2005 Regular Session bill information for "Life Insurance Freedom to Travel Act," current as of 12/15/05. Illinois law found at 215 IL. CS 5/236 (2005).

[10] "An act relating to prohibiting discrimination in life insurance based on lawful travel destinations," Engrossed House Bill 1561, State of Washington, 59th Legislature (2005).

[11] Cal. Ins. Code s. 10111.7 (2005).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures: None

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unable to be determined.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other: None

B. RULE-MAKING AUTHORITY:

The bill provides authority for the Financial Services Commission (Governor and Cabinet) to develop rules to implement the provisions in the bill and provides authority to the Commission to allow for limited exceptions based on national or international emergency conditions affecting public health, safety and welfare and that are consistent with public policy.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Reaction by the Insurance Industry

The sponsor of the bill submitted a letter for the record from Florida Combined Life Insurance Company, a subsidiary of Blue Cross and Blue Shield of Florida and licensed to conduct business in

Florida, Georgia, South Carolina and Alabama, in support of the bill. According to the insurer, the bill promotes good public policy and protects individuals' right to travel.[12]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 26, 2006, the Insurance Committee adopted one amendment to the bill. The amendment authorized the Financial Services Commission to adopt rules to implement the law and to provide limited exceptions based upon emergencies and consistent with public policy.

As amended, the bill was reported favorably as a committee substitute.

On March 24, 2006 the Transportation and Economic Development Committee adopted one strike-all amendment. The amendment amends s. 626.9541, F.S., the Unfair Methods of Competition and Unfair or Deceptive Act, by creating a new unfair or deceptive trade provision ("dd"). The legislation would prohibit life insurers from refusing life insurance to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences.

The bill would further prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's future lawful foreign travel plans, unless life insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel.

[12] Letter to Representative Eleanor Sobel from Terri Schmidt, President, Florida Combined Life Insurance Company, December 21, 2005, on file with the Insurance Committee.

CHAMBER ACTION

The Transportation & Economic Development Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to travel-limited life insurance coverage; providing a short title; amending s. 626.9541, F.S.; specifying prohibited activities by insurers for life insurance coverage relating to lawful travel experiences or plans; authorizing the Financial Services Commission to adopt rules and provide certain limited exceptions based on emergency conditions and public policy; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Freedom to Travel Act."

Section 2. Paragraph (dd) is added to subsection (1) of section 626.9541, Florida Statutes, to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.--

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.--The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(dd) Life insurance limitations based on past foreign travel experiences or future foreign travel plans.--

1. An insurer may not refuse life insurance to, refuse to continue the life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences.

2. An insurer may not refuse life insurance to, refuse to continue the life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful travel plans unless the insurer can demonstrate, and the Office of Insurance Regulation determines, that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel.

3. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this paragraph and may provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 531 CS Prosperity Campaigns
SPONSOR(S): Jennings
TIED BILLS: **IDEN./SIM. BILLS:** SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	15 Y, 0 N, w/CS	Olmedillo	Carlson
2) Transportation & Economic Development Appropriations Committee	18 Y, 0 N, w/CS	McAuliffe	Gordon
3) Community Colleges & Workforce Committee	6 Y, 0 N, w/CS	Thomas	Ashworth
4) Commerce Council		Olmedillo	Randle
5)			

SUMMARY ANALYSIS

HB 531 CS creates a Prosperity Campaign Council (Council) to be housed in Workforce Florida, Inc., to develop, enhance and assist in the coordination of Prosperity Campaigns throughout the state with the goal of providing economic benefit services and related information to Florida citizens.

The Florida Prosperity Campaign Council, is composed of 20 members and assigned the following responsibilities:

- Assist in the development and enhancement of Prosperity Campaigns and related programs throughout the state;
- Work with all levels of government, non-profit entities and the private sector to provide economic benefit services and related information to Florida citizens;
- Work with the Department of Education in developing financial literacy instruction to be part of the life management skills course;
- Take other action as necessary to perform its function; and
- Provide a report to the Governor regarding the effectiveness of the Council.

The bill specifies the composition and size of the Council, the term of the appointments, the frequency of meetings, and its organizational structure.

Additionally, HB 531 CS requires financial literacy instruction to be included in the required high school life management skills course.

The provisions of this bill relating to the Prosperity Campaign Council will be repealed on July 1, 2010, unless reviewed and saved from repeal by the Legislature.

The bill provides an appropriation of $162,000 and 1.5 (FTE) full time employees from the General Revenue Fund to fund the Prosperity Campaign Council.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited Government - The bill creates the Prosperity Campaign Council, composed of 20 members and housed within Workforce Florida, Inc., to establish and coordinate Prosperity Campaigns throughout Florida.

Empower families – The bill encourages the Prosperity Campaign to connect low-wage workers to the Earned Income Tax Credit (EITC) and the Childcare Tax Credit; offer free tax preparation services, economic benefits screening and other related services. As a result, more low-wage workers will be informed and will likely apply for this credit, which will increase their income even when the amount of the EITC exceeds the amount of taxes workers owe.

Promote Personal Responsibility – The bill encourages Prosperity Campaigns to educate citizens about available economic benefit programs and the importance of wise financial decision-making. Consequently, the bill may reduce government dependency.

B. EFFECT OF PROPOSED CHANGES:

EARNED INCOME TAX CREDIT (EITC)
Present Situation

Created in 1975, the Earned Income Tax Credit (EITC), sometimes called Earned Income Credit (EIC), is a refundable federal income tax credit for low-income working individuals and families. According to the Tax Policy Center (Tax Notes, March 14, 2005) the EITC, administered through the federal income tax system, is the largest cash assistance program for low-income families. The EITC program is designed to encourage work by subsidizing people's wages. The EITC provides up to $4,400 a year for working families with two or more children. In 2002, the EITC lifted approximately 4.9 million people out of poverty.[1]

In a January 17, 2006 news article, Workforce Florida, Inc. stated that "[b]ased on the information from the IRS it is projected that as much as $635 million goes unclaimed by the estimated 350,000+ families/individuals in Florida who are not taking advantage of the EITC."

According to the Agency for Workforce Innovation: the state's workforce system, led by Workforce Florida, Inc., the Agency for Workforce Innovation and the 24 Regional Workforce Boards has emphasized and conducted annual Earned Income Tax Credit (EITC) informational campaigns for several years. These informational campaigns target first-time workers, the "working poor" and those exiting from public assistance through employment. Additionally, the Department of Children and Families also provides similar notices to public assistance participants and other low-wage workers.

Local workforce efforts are often conducted in collaboration with local Prosperity Campaigns, financial literacy programs and other similar efforts to demonstrate that "work pays". Currently, Prosperity Campaigns exist in 12 counties throughout Florida.

Effect of Proposed Changes

Prosperity Campaign Council
The HB 531 CS creates the "Prosperity Campaign Council" (Council), to be housed in Workforce Florida, Inc. The Council is directed to develop, enhance and assist in the coordination of Prosperity Campaigns throughout the state with the goal of providing economic benefit services and related information to Florida citizens.

[1] Tax Policy Center, *Disparities in Knowledge of the EITC*, March 14, 2005.

The composition of the Council is as follows:

- One member of the Senate appointed by the President of the Senate, who shall serve as an ex officio, nonvoting member;
- One member of the House of Representatives appointed by the Speaker, who shall serve as an ex officio, nonvoting member;
- The Chief Financial Officer or his or her designee, who shall serve as an ex officio, nonvoting member;
- The Commissioner of Education or his or her designee, who shall serve as an ex officio, nonvoting member;
- Three individuals each representing a different Prosperity Campaign in the state and appointed by the Governor;
- One representative from each of the following organizations or entities, who shall be appointed by the Governor:
    - Greater Miami Prosperity Campaign;
    - Florida Bankers Association;
    - The Florida Institute of Certified Public Accountants (CPAs);
    - The Florida League of Cities;
    - The Florida Credit Union League;
    - The Florida Association of Counties;
    - The Florida Association of Realtors;
    - United Way of Florida;
    - Leadership Florida;
    - The Florida Chamber of Commerce;
    - A non-profit or community based low wage worker organization;
    - The Florida Jump$tart Coalition for Personal Financial Literacy; and
    - Disability Navigator Program with the Agency for Workforce Innovation.

The bill also sets the length of a term of appointment for each member at 2 years beginning on July 1, 2006 and requires that vacancies be made for the balance of the unexpired term in the same manner as the original appointments.

Council members will serve without compensation. However, they are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.

The Council's responsibilities are as follows:

- Assisting in the development and enhancement of Prosperity Campaigns and related programs throughout the state, using the best practices developed by Prosperity Campaigns in Florida and nationally;
- Work with all levels of government, non-profit entities and the private sector to provide economic benefit programs and financial literacy information to Florida citizens;
- Work with the Department of Education in developing financial literacy instruction to be part of the life management skills course pursuant to s. 1003.43; and
- Take other action as necessary to meet its statutory mission.

Beginning June 30, 2007, and annually thereafter, the Council must provide a report to the Governor and the Legislature on the Council's effectiveness, obstacles and future recommendations for legislative action.

The provisions of the bill relating to the Prosperity Campaign Council will stand repealed on July 1, 2010, unless it is reviewed and saved from repeal through reenactment.

FINANCIAL LITERACY IN HIGH SCHOOLS
Present Situation

Currently, 24 credits are required for high school graduation, pursuant to s. 1003.43, F.S. These include:

- one-half credit in life management skills which includes consumer education; and
- one-half credit in economics that includes a comparative study of the history, doctrines and objectives of all major economic systems. The Florida Council on Economic Education provides technical assistance to the department and district school boards in developing curriculum and materials for the study of economics.

Effect of Proposed Changes

The HB 531 CS requires the Prosperity Campaign Council to work with the Department of Education in developing a financial literacy instruction to be part of the life management skills course required for high school graduation. The financial literacy instruction must focus on the importance of financial management, savings investments, credit scores, savings and additional materials.

The HB 531 CS requires financial literacy instruction to be included in the high school life management skills course required for high school graduation.

The bill provides an appropriation of $162,000 and 1.5 FTE full time employees including salary and rate from the General Revenue Fund in fiscal year 2006-2007 to Workforce Florida Inc., to fund the Prosperity Campaign Council.

C. SECTION DIRECTORY:

Section 1: Creates s. 445.057, F.S., to establish the Prosperity Campaign Council; establishes the composition and size of the Council, the term of the appointments, the frequency of meetings, its organizational structure, its mission and responsibilities.

Section 2. Amends s. 1003.43, F.S., relating to general requirements for high school graduation; requiring financial literacy instruction to be part of the life management skills one-half credit requirement.

Section 3. Provides an appropriation of $162,000 and 1.5 FTE including salary and rate from the General Revenue Fund to fund the Prosperity Campaign Council.

Section 4: Provides that the bill will take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   The bill provides an appropriation of $162,000, and 1.5 FTE including salary and rate from the General Revenue Fund in fiscal year 2006-2007 to Workforce Florida Inc., to fund the Prosperity Campaign Council. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If this law brings greater awareness to the availability of the EITC for working families and individuals, the qualifying families and individuals who receive federal monies would presumably spend that money locally.

D. FISCAL COMMENTS:

Costs
The 20 member council, which is to be administratively housed within Workforce Florida, defines a number of coordination and information dissemination roles for the council, such as hosting the required council meeting, preparations, publication, and dissemination of printed materials to businesses and employees, and providing free tax preparation, economic benefit screenings and providing other related services to individuals. According to the Agency for Workforce Innovation, in order to provide these types of services a minimum of one full time staff position and a half-time support position will be needed to implement and support the council.

The cost of these activities is difficult to determine; however, the following is a projected estimate of state level costs:
1.5 full time employees with salary and benefits at $87,000; quarterly meetings at $50,000, printing/copying/publication/consultants/postage/supplies/miscellaneous at $15,000; traveling/meetings outside of the quarterly meetings at $10,000. The total state level cost is estimated at $162,000.

The local level costs are estimated at $120,000 for staff and materials for twenty-four Regional Workforce Boards.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 531 CS does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. HB 531 CS does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. HB 531 CS does not reduce the percentage of state tax shared with municipalities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 26, 2006, the Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill. The amendment reorganizes and clarifies the purpose and methods by which the Prosperity Campaign Council will operate, and removes redundant and unnecessary language.

On March 22, 2006, the Transportation and Economic Development Appropriations Committee adopted one amendment to the bill providing an appropriation of $162,000 from the General Revenue Fund to fund the Prosperity Campaign Council.

On March 28, 2006, the Community Colleges and Workforce Committee adopted two amendments to the bill. Amendment # one revises the composition of the Council by reducing by one the number of persons representing different Prosperity Campaigns in the State and adding one representative of individuals with disabilities from the Disability Navigator Program within the Agency for Workforce Innovation. Amendment # two clarifies that 1.5 FTE, including salary and rate, is included in the $162,000 appropriated funds.

CHAMBER ACTION

The Community Colleges & Workforce Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to Prosperity Campaigns; creating s. 445.057, F.S.; establishing the Florida Prosperity Campaign Council within Workforce Florida, Inc.; providing membership; providing for meetings and reimbursement for per diem and travel expenses; providing duties of the council; requiring development of financial literacy instruction to be included in high school life management skills coursework; providing reporting requirements; providing for repeal; amending s. 1003.43, F.S., relating to general requirements for high school graduation; requiring financial literacy instruction to be part of the life management skills credit requirement; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 445.057, Florida Statutes, is created to read:

445.057 Florida Prosperity Campaign Council.--

(1) There is established the Florida Prosperity Campaign Council to be administratively housed in Workforce Florida, Inc. The council shall develop, enhance, and assist in the coordination of Prosperity Campaigns throughout the state with the goal of providing economic benefits services and related information to Florida citizens.

(2) The council shall consist of the following members, each appointed by the Governor except as otherwise provided:

(a) One member of the Senate appointed by the President of the Senate, who shall serve as an ex officio, nonvoting member.

(b) One member of the House of Representatives appointed by the Speaker of the House of Representatives, who shall serve as an ex officio, nonvoting member.

(c) The Chief Financial Officer or his or her designee, who shall serve as an ex officio, nonvoting member.

(d) The Commissioner of Education or his or her designee, who shall serve as an ex officio, nonvoting member.

(e) Three persons representing different Prosperity Campaigns in the state.

(f) One member of the Greater Miami Prosperity Campaign.

(g) One representative from the Florida Bankers Association.

(h) One representative from the Florida Institute of CPAs.

(i) One representative from the Florida Credit Union League.

(j) One representative from the Florida League of Cities.

(k) One representative from the Florida Association of Counties.

(l) One representative from the Florida Association of Realtors.

(m) One representative from United Way of Florida.

(n) One representative from Leadership Florida.

(o) One representative from the Florida Chamber of Commerce.

(p) One representative from a nonprofit or community-based low-wage worker organization.

(q) One representative from the Florida Jump$tart Coalition for Personal Financial Literacy.

(r) One representative of individuals with disabilities from the Disability Navigator Program within the Agency for Workforce Innovation.

(3) Council members shall be appointed to serve 2-year terms beginning July 1, 2006. A vacancy on the council shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(4) The council shall meet quarterly or upon the call of the chair. Annually, at the meeting in the first quarter, officers consisting of a chair, vice chair, and secretary shall be elected to serve until a successor is elected. No officer shall serve more than 2 consecutive years in the same office.

(5) Members of the council shall serve without compensation, but shall be reimbursed for per diem and travel expenses in accordance with s. 112.061.

(6) The council shall have the following responsibilities:

(a) Assist in the development and enhancement of Prosperity Campaigns and related programs throughout the state, using best practices developed by Prosperity Campaigns in Florida and nationally.

(b) Work with federal, state, and local governments, nonprofit entities, and the private sector to provide information to Florida citizens about economic benefits programs and financial literacy.

(c) Work with the Department of Education in developing financial literacy instruction to be part of the life management skills course pursuant to s. 1003.43.

(d) Take other action as necessary to meet its statutory mission as described in subsection (1).

(7) By June 30, 2007, and annually thereafter, the council shall provide a detailed report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the council's performance of the responsibilities required by subsection (6). The report shall include an assessment of the effectiveness of Prosperity Campaigns and an evaluation of obstacles to that effectiveness and shall make recommendations for legislative action.

(8) The provisions of this section shall stand repealed on July 1, 2010, unless saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (i) of subsection (1) of section 1003.43, Florida Statutes, is amended to read:

1003.43 General requirements for high school graduation.--

(1) Graduation requires successful completion of either a minimum of 24 academic credits in grades 9 through 12 or an International Baccalaureate curriculum. The 24 credits shall be distributed as follows:

(i) One-half credit in life management skills to include instruction in financial literacy focused on the importance of financial management, savings, investments, credit scores, and other relevant subjects; consumer education; positive emotional development; marriage and relationship skill-based education; nutrition; parenting skills; prevention of human immunodeficiency virus infection and acquired immune deficiency syndrome and other sexually transmissible diseases; benefits of sexual abstinence and consequences of teenage pregnancy; information and instruction on breast cancer detection and breast self-examination; cardiopulmonary resuscitation; drug education; and the hazards of smoking.

District school boards may award a maximum of one-half credit in social studies and one-half elective credit for student completion of nonpaid voluntary community or school service work. Students choosing this option must complete a minimum of 75 hours of service in order to earn the one-half credit in either category of instruction. Credit may not be earned for service provided as a result of court action. District school boards that approve the award of credit for student volunteer service shall develop guidelines regarding the award of the credit, and school principals are responsible for approving specific volunteer activities. A course designated in the Course

Code Directory as grade 9 through grade 12 that is taken below the 9th grade may be used to satisfy high school graduation requirements or Florida Academic Scholars award requirements as specified in a district school board's student progression plan. A student shall be granted credit toward meeting the requirements of this subsection for equivalent courses, as identified pursuant to s. 1007.271(6), taken through dual enrollment.

Section 3. The sum of $162,000 and 1.5 FTE, including salary and rate, are appropriated from the General Revenue Fund in fiscal year 2006-2007 to Workforce Florida, Inc., to fund the Florida Prosperity Campaign Council as created by this act.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 541 National Catastrophe Insurance Program
SPONSOR(S): Ross and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 1676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N	Freire	Cooper
2) Commerce Council		Freire	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

In the span of 15 months, Florida suffered damage from four tropical storms and eight hurricanes. Of the eight hurricanes hitting Florida, seven are considered among the twelve costliest insured catastrophes in United States history. In total, Florida lost over $15 billion in 2004 and over $13.5 billion in 2005.

In response to these catastrophes, House Memorial 541 urges the United States Congress to create a National Catastrophe Insurance Program. The resolution calls for a program that provides consumers with all-perils protection; promotes personal responsibility through mitigation; creates a tax-deferred insurance company; enhances local and state government's role in catastrophic events; and creates a national catastrophic financing mechanism.

At least three bills are currently before Congress addressing elements of a national catastrophe program. Congresswoman Brown-Waite and Congressman Shaw have proposed legislation, H.R. 4366, entitled the "Homeowners Insurance Act of 2005." The bill establishes a reinsurance program for natural catastrophes. Congressman Feeney has proposed H.R. 4836, creating the "Catastrophe Savings Account Act of 2006." The bill provides consumers with the ability to manage a personal Catastrophe Savings Account exempt from taxation (other than taxes imposed by section 511). Congressman Foley has proposed H.R. 2668, creating a "Policyholder Disaster Protection Act of 2005." The bill allows insurance companies to place catastrophe reserves in tax deferred accounts.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: This memorial promotes the retrofitting of existing housing stock in order to mitigate hurricane damage.

Empower Families: This memorial provides families with the ability to manage their own disaster savings account which accumulate on a tax-advantaged basis for the purpose of paying for mitigation enhancements and catastrophic losses.

B. EFFECT OF PROPOSED CHANGES:

Background:

In the span of 15 months, eight hurricanes and four tropical storms impacted the State of Florida.[1] Hurricanes Charley, Frances, Ivan, and Jeanne were "the Big Four in 04", and Hurricanes Dennis, Katrina, Rita and Wilma hit the state during the 2005 hurricane season.[2] Of these hurricanes, Katrina, Charley, Wilma, Ivan, Frances, Jeanne and Rita are among the twelve costliest insured catastrophes in U.S. history.[3]

According to the Office of Insurance Regulation (OIR), the estimated gross probable losses of each hurricane in 2005 were as follows:[4]

- Hurricane Dennis: $1,393,755,968
- Hurricane Katrina: $1,840,665,913
- Hurricane Rita: $157,480,462
- Hurricane Wilma: $10,455,869,001

The estimated loss of each hurricane in 2004 was as follows:[5]

- Hurricane Charley: $7.4 billion
- Hurricane Frances: $4.8 billion
- Hurricane Ivan: $4.8 billion
- Hurricane Jeanne: $3.9 billion

Until Hurricane Katrina hit the gulf states in 2005, causing an estimated $38.1 billion in insured losses, Hurricane Andrew, in 1992, had been the costliest catastrophe in U.S. history, costing the State of Florida an insured loss of $21 billion.[6]

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[1] *Late Breaking Insurance News: Key Facts from Florida's 2004 and 2005 Hurricane Seasons; Eight Hurricanes & Four Tropical Storms in 15 Months*, Florida Insurance Council, February 2, 2006, available at http:www.flains.org/public/05hurricanecentral113.html-ssi, viewed on March 13, 2006.

[2] *Late Breaking Insurance News: Key Facts from Florida's 2004 and 2005 Hurricane Seasons; Eight Hurricanes & Four Tropical Storms in 15 Months*, Florida Insurance Council, February 2, 2006, available at http:www.flains.org/public/05hurricanecentral113.html-ssi, viewed on March 13, 2006.

[3] Robert E. Litan, *Preparing for Future "Katrinas"*, The Brookings Institution: Policy Brief #150, (March 2006), on file with Insurance Committee.

[4] *See Florida CY 2005 Hurricane Reporting Summary as of February 28, 2006*, provided by the Florida Office of Insurance Regulation Market Research Unit, on file with the Insurance Committee.

[5] Office of Insurance Regulation, 2005 Hurricane Season and 2004 Hurricane Season information, dated December 6, 2005

In addition to insurance related losses, hurricanes also cause problems and disruptions in the lives of affected parties. For instance, hurricanes displace people from their homes, result in loss of personal belongings, close businesses and institutions, cause temporary loss of employment, and create numerous health and safety issues in communities.

Catastrophes

The Insurance Services Office (ISO) defines a catastrophe as an event that causes $25 million or more in insured property losses and affects a significant number of property/casualty policyholders and insurers.[7]

Natural disasters are one type of catastrophe. Natural disasters continually threaten the United States, and extreme weather conditions pose an immediate danger to the livers, property, security of all residents. This includes cyclones, tornadoes, terrorism, winter storms, earthquakes, wind/hail/flood, and fire.[8] Other catastrophes include terrorism and civil disorders.[9] The five most costly U.S. catastrophes include Hurricane Katrina, Hurricane Andrew, the September 11 terrorist attacks in 2001, the Northridge, California earthquake, and Hurricane Wilma.[10]

HM 541:

House Memorial 541 is a resolution of the State of Florida urging the Congress of the United States to support a National Catastrophe Insurance Program. The suggested insurance program should:

- Provide consumers with a private market residential program that provides all-perils protection;
- Promote personal responsibility through mitigation;
- Create tax-deferred insurance company catastrophe reserves to benefit policyholders;
- Enhance local and state government's role in establishing and maintaining effective preparation and responses to catastrophic events; and
- Create a national catastrophe financing mechanism providing a quantifiable level of risk management and financing for mega-catastrophes through sound risk-based premiums paid in correct proportion by all policyholders in the United States.

Supporters of a National Catastrophe plan include Florida's Chief Financial Officer, Tom Gallagher; the Insurance Commissioners in Florida, New York, Illinois, and California; the National Association of Insurance Commissioners; and the National Association of Realtors.

Catastrophe Insurance Program Proposals:

Congresswoman Brown-Waite and Congressman Shaw have proposed legislation, H.R. 4366, creating the "Homeowners Insurance Act of 2005." The purpose of the bill is to create a Consumer Hurricane and Earthquake Protection Fund to provide reinsurance to insurance companies at lower rates than they can get on the private market. The fund would also cover tornados, volcanic eruptions, and other

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[6] *See* Robert E. Litan, *Preparing for Future "Katrinas"*, The Brookings Institution: Policy Brief #150, (March 2006), on file with Insurance Committee.
[7] *Catastrophes: The Ten Most Costly World Insurance Losses*, available at http://www.iii.org/media/facts/statsbyissue/catastrophes, on file with Insurance Committee.
[8] *Catastrophes: The Ten Most Costly World Insurance Losses*, available at http://www.iii.org/media/facts/statsbyissue/catastrophes, on file with Insurance Committee.
[9] *Catastrophes: The Ten Most Costly World Insurance Losses*, available at http://www.iii.org/media/facts/statsbyissue/catastrophes, on file with Insurance Committee.
[10] *Catastrophes: The Ten Most Costly World Insurance Losses*, available at http://www.iii.org/media/facts/statsbyissue/catastrophes, on file with Insurance Committee.

disasters.[11] Under this catastrophe fund legislation, private insurers would be responsible for losses up to amounts determined on a state-to-state or regional basis.[12] State catastrophe funds would pay additional losses up to their limits before the national fund would kick in. The national fund would sell reinsurance to the state funds.[13] Reinsurance is backup insurance sold by some insurance companies to other insurers, spreading the risk so that huge losses can be covered.[14]

Congressman Feeney has proposed H.R. 4836, creating the "Catastrophe Savings Account Act of 2006." This Act adds a chapter to the Internal Revenue Code of 1986 providing consumers with the ability to manage a personal, tax-exempt Catastrophe Saving Account.[15] The account would be a trust created/organized in the U.S. for the exclusive benefit of beneficiaries designated at the time of the establishment of the trust. The bill further delineates how to measure an account's balance limit; provides definitions for qualified catastrophe expenses, qualified deductible, and qualified rollover contribution; and it delineates the tax treatment of distributions.

Congressman Foley has proposed H.R. 2668, creating a "Policyholder Disaster Protection Act of 2005." The Act amends the Internal Revenue Code of 1986 and provides for the creation of a tax-deferred insurance company catastrophe reserves benefit for the payment of policyholders' claims arising from future catastrophic events. The Act explains that present tax law does not give adequate incentive to assure that natural disasters insurance is provided. The Act finds Congress should revise tax laws applicable to property and casualty insurance in order to allow controlled accumulation of pretax dollars devoted solely to the payment of claims arising from future major natural disasters. In order to qualify, the event must be designated either a windstorm (hurricane, cyclone, or tornado), an earthquake, a winter catastrophe, fire, tsunami, flood, volcanic eruption, or hail, and the event must me designated a "catastrophe" by Property Claim Services, the President, or by the chief executive official of a State or territory of the United States, or the District of Columbia.

C. SECTION DIRECTORY:

This memorial is not divided into separate sections. It provides a series of "whereas" clauses, followed by a resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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[11] *Allstate Promotes Catastrophe Fund*, January 14, 2004, Associate Press, available on http://www.allstate.com; originally appearing on News-Journal Online at http://www.news-journalonline.com/NewsJournalOnline/Business/Headlines/bizBIZ05011406.htm, on file with Insurance Committee.
[12] *Allstate Promotes Catastrophe Fund*, January 14, 2004, Associate Press, available on http://www.allstate.com; originally appearing on News-Journal Online at http://www.news-journalonline.com/NewsJournalOnline/Business/Headlines/bizBIZ05011406.htm, on file with Insurance Committee.
[13] *Allstate Promotes Catastrophe Fund*, January 14, 2004, Associate Press, available on http://www.allstate.com; originally appearing on News-Journal Online at http://www.news-journalonline.com/NewsJournalOnline/Business/Headlines/bizBIZ05011406.htm, on file with Insurance Committee.
[14] *Allstate Promotes Catastrophe Fund*, January 14, 2004, Associate Press, available on http://www.allstate.com; originally appearing on News-Journal Online at http://www.news-journalonline.com/NewsJournalOnline/Business/Headlines/bizBIZ05011406.htm, on file with Insurance Committee.
[15] **H.R. 4836(1).**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent this memorial urges Congress to adopt a National Catastrophe Insurance Program for the benefit of consumers; the consumers should experience a positive economic impact (through the use of catastrophe savings accounts and measures to mitigate catastrophic damages.)

D. FISCAL COMMENTS:

OIR indicated the Resolution has no fiscal or regulatory impact for the Office.[16]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Office of Insurance Regulation strongly supports HM 541. The office has been working with the National Association of Insurance Commissioners, the National Council of Insurance Legislators, members of Congress, and key stakeholders to create a comprehensive federal solution that pre-funds catastrophic losses and provides for an affordable, comprehensive policy.[17]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[16] Email from OIR to Insurance Committee, dated January 19, 2006, on file with the Insurance Committee.
[17] Email from OIR to Insurance Committee, dated January 19, 2006, on file with the Insurance Committee.

House Memorial

A memorial to the Congress of the United States urging Congress to support a National Catastrophe Insurance Program.

WHEREAS, during the 2004 and 2005 hurricane seasons, the State of Florida was devastated by eight hurricanes and four tropical storms, causing approximately $35 billion in estimated gross probable insurance losses, and

WHEREAS, the hurricanes from the 2004 and 2005 hurricane seasons have produced high winds, coastal storm surges, torrential rainfalls, and flooding resulting in significant damage to Florida and the Gulf Coast states, which has resulted in displacement of policyholders from their dwellings, loss of personal belongings and contents, closing of businesses and financial institutions, and temporary loss of employment and has created numerous health and safety issues within our local communities, and

WHEREAS, in 1992, Hurricane Andrew resulted in approximately $20.8 billion in insured losses and was previously the costliest catastrophe in the United States, but Hurricane Katrina alone left the Gulf Coast states with an estimated loss of approximately $35 billion, and

WHEREAS, natural disasters continually threaten communities across the United States with extreme weather conditions that pose an immediate danger to the lives, property, and security of the residents of those communities, and

WHEREAS, the insurance industry, state officials, and consumer groups have been striving to develop solutions to

insure mega-catastrophic risks, because hurricanes, earthquakes, tornadoes, typhoons, floods, wildfires, ice storms, and other natural catastrophes continue to affect policyholders across the United States, and

WHEREAS, on November 16 and 17, 2005, insurance commissioners from Florida, California, Illinois, and New York convened a summit to devise a national catastrophe insurance plan which would more effectively spread insurance risks and help mitigate the tremendous financial damage survivors contend with following such catastrophes, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is urged to support a National Catastrophe Insurance Program. Policyholders require a rational insurance mechanism for responding to the economic losses resulting from catastrophic events. The risk of catastrophes must be addressed through a public-private partnership involving individuals, private industry, local and state governments, and the Federal Government. A national catastrophe insurance program is necessary to promote personal responsibility among policyholders; support strong building codes, development plans, and other mitigation tools; maximize the risk-bearing capacity of the private markets; and provide quantifiable risk management through the Federal Government. The program should encompass:

(1) Providing consumers with a private market residential insurance program that provides all-perils protection.

(2) Promoting personal responsibility through mitigation;

promoting the retrofitting of existing housing stock; and providing individuals with the ability to manage their own disaster savings accounts that, similar to health savings accounts, accumulate on a tax-advantaged basis for the purpose of paying for mitigation enhancements and catastrophic losses.

(3) Creating tax-deferred insurance company catastrophe reserves to benefit policyholders. These tax-deferred reserves would build up over time and only be eligible to be used to pay for future catastrophic losses.

(4) Enhancing local and state government's role in establishing and maintaining effective building codes, mitigation education, and land use management; promoting state emergency management, preparedness, and response; and creating state or multistate regional catastrophic risk financing mechanisms such as the Florida Hurricane Catastrophe Fund.

(5) Creating a national catastrophe financing mechanism that would provide a quantifiable level of risk management and financing for mega-catastrophes; maximizing the risk-bearing capacity of the private markets; and allowing for aggregate risk pooling of natural disasters funded through sound risk-based premiums paid in correct proportion by all policyholders in the United States.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 661 CS Governmental Services Telephone Systems
SPONSOR(S): Arza
TIED BILLS: **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	12 Y, 0 N, w/CS	Cater	Holt
2) Transportation & Economic Development Appropriations Committee	18 Y, 0 N, w/CS	McAuliffe	Gordon
3) Commerce Council		Cater	Randle
4)			
5)			

SUMMARY ANALYSIS

The bill establishes within the Department of Community Affairs (DCA) a matching grant program to provide funds to local governments for the implementation and coordination of "311 nonemergency and other governmental services telephone systems." It provides legislative intent that a coordinated 311 system may reduce the volume of nonemergency 911 calls and provide seamless access to various governmental entities. It authorizes DCA to accept and administer appropriated funds to provide grants. With the grant program, a municipality or county that wishes to receive grant funds must provide $1 for every $1 in grant money it wishes to receive. The bill provides a system for awarding the grants, but limits the award amount that a municipality or county may receive. The bill provides that a report be submitted by each 311 system receiving funding by December 15, 2007.

The bill assigns the DCA the tasks of reviewing each grant application, arranging them in order of priority, and approving or disapproving funding. The bill provides minimum criteria for DCA to consider when evaluating the grant requests. The bill gives DCA rulemaking authority to administer the provisions of this bill.

The bill provides grants for the coordinated 311 nonemergency and other governmental services telephone system grant program may be awarded to the extent funds are appropriated in law or made available from private sources.

This act shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates a matching grant program where municipalities and counties can obtains funds from DCA to implement a coordinated 311 telephone system.

Maintain Public Security-The bill provides legislative findings that a 311 telephone system for nonemergency and other governmental services may reduce the volume of nonemergency calls to 911 public safety answering points.

B. EFFECT OF PROPOSED CHANGES:

Background

The History of 311 Systems

In 1997 the Federal Communications Commission designated "311" as a national, voluntary, non-toll, three-digit telephone number for non-emergencies.[1] This designation was prompted by concerns relating to the misuse of 911 emergency systems. Evaluations of 911 usage during the mid-1990's indicated that 50 to 90 percent of all calls to 911 were not actual emergencies.[2] These nonemergency calls resulted in backlogs and inefficiencies for public safety agencies, as well as frustration for callers with emergency needs.

According to the U.S. Department of Justice, 311 systems vary in the types of non-emergency calls handled, as designated by individual jurisdictions. Similar to 911 systems, 311 call centers generally operate 24 hours a day, take requests for service only inside their jurisdictions, and often dispatch assistance. Employees are also trained to deal with 911 emergencies in case of inappropriate/misdirected calls. Examples of non-emergency calls include incidents that are non-life threatening and do not require an immediate response.

Florida's 311 Experience

Miami-Dade County activated its 311 system on November 29, 2004, where it is a central number for reaching a wide variety of government services. Emergency management officials in Miami-Dade County made extensive use of the recently activated 311 system during the 2005 hurricane season. During the emergency activations for Hurricanes Rita, Katrina and Wilma, 311 handled more than 250,000 calls immediately before, during and after the storms. County officials reported that during these activations, the 311 system was able to take many calls that would have previously gone to 911, enabling the 911 system to remain available for truly life-threatening situations. County officials identified the following benefits associated with the 311 system:

- Provides a fast, simple and convenient single access point for residents to obtain information and request services from their local government;
- Makes delivery of services more efficient and effective by consolidating agency-based answer centers and streamlining processes;

[1] FCC Order No. FCC 97-51, released February 19, 1997.
[2] U.S. Department of Justice, Office of Community Oriented Policing, "*311 for Non-Emergencies – Helping Communities One Call at a Time*", August 25, 2003.

- Increases governments' ability to respond to unanticipated events, such as severe storm events and hurricanes, by steering non-emergency calls away from 911, preserving the availability of the emergency system for callers truly in need of an immediate response;

- Improves individual department service delivery and accountability through real-time, countywide service performance tracking and reporting;

- Provides 'closed loop' communications with citizens by integrating front-end service requests with the back-end resolution processes; and

- Provides seamless multi-jurisdictional services for citizens regardless to where they live.

Currently, Miami-Dade and Orange are the only Florida counties that have operational 311 systems. However, a number of local governments have expressed interest in implementing a 311 system.

Proposed Changes

The bill creates s. 365.180, F.S., relating to the coordinated 311 nonemergency and other governmental services telephone systems grant program.

The bill provides legislative intent that a 311 telephone system for nonemergency and other governmental services may reduce the volume of nonemergency 911 calls, particularly in times of a disaster.

The bill defines "coordinated 311 nonemergency and governmental services telephone system" as a 311 system that is multi-jurisdictional in nature such that it is designed to provide seamless access to nonemergency and other governmental service.

The bill authorizes the DCA to accept and administer funds that are appropriated to it to provide grants to counties and municipalities for the operation of a coordinated 311 nonemergency and other governmental services telephone system.

A county or municipality may apply for a state grant to support the implementation and operation of a coordinated 311 nonemergency and other governmental services telephone system. A grant awarded under this section must be matched by a contribution from the county or municipality in an amount equal to $1 for each $1 in grant money awarded.

The DCA is required to review each grant application submitted, and annually submit two lists to the Secretary of DCA. The first list must contain all applications received, and the second list must make recommendations for grant awards arranged in order of priority. The Secretary of DCA must approve the grant before it can be issued. The DCA may allocate grants only for coordinated 311 nonemergency and other governmental services telephone systems that are approved by the Secretary or for which funds are appropriated by the Legislature.

The annual amount of any one grant may not exceed 50 percent of the total annual cost of operating the coordinated 311 system, but an annual grant to a coordinated 311 system is capped at $2.5 million. The total amount of grants awarded to a coordinated 311 system in a 5-year period may not exceed $10 million.

By December 15, 2007, each 311 system that receives state matching funds must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing how the funds appropriated for the 311 system were spent.

The DCA may adopt rules prescribing the criteria to be applied to applications for grants and rules providing for the administration of this section. The bill requires the minimum criteria in evaluating a municipality or county's request for a grant to include the following:

- Population;
- Prior establishment of a 311 number;
- Interoperability between proposed 311 system and existing 911 system;
- Commitment of funds beyond the minimum match contribution; and
- Long-range plan for sustainability.

The bill provides grants for the coordinated 311 nonemergency and other governmental services telephone system grant program may be awarded to the extent funds are appropriated in law or made available from private sources.

This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates s. 365.180, F.S., related to the coordinated 311 nonemergency and other governmental services telephone system grant program.

Section 2. Provides that grants for 311 services may be awarded by DCA to the extent funds are appropriated or made available from private sources.

Section 3. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Municipalities and counties are eligible to receive grants, to the extent funds are appropriated in law are made available from private sources, from DCA in order to implement a coordinated 311 system.

2. Expenditures:

   In order to receive a grant through this program, a municipality or county is to provide a matched contribution of $1 for every $1 in grant money awarded. These monies would be used to implement a coordinated 311 system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DCA, it will require two additional positions to administer the grant program. Its five year fiscal estimates are as follows:

2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five-Year Total
$109,500	$100,768	$102,054	$103,360	$104,685	$520,367

This estimate is based on the following assumptions:

- A 1.5 percent annual salary increase;
- Two grants of $1,000,000 awarded annually; and
- Heavy start-up costs in the 2006-2007 fiscal year.

However, since there is no specific funding for the program in this bill, and unless the private sector provides significant funding, the additional positions should not be necessary.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill allows DCA to adopt rules prescribing the criteria to be applied to applications for grants and for the administration of this section. The bill provides minimum criteria to be considered in evaluating the application.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Utilities & Telecommunications Committee adopted one amendment. This amendment provides minimum criteria for DCA to consider when evaluating grants to municipalities and counties for implementing a 311 system.

At the April 4, 2006 meeting, the Transportation and Economic Development Appropriations Committee approved HB 661 with two amendments. The first amendment provides each 311 system receiving state matching funds must submit a report to the Governor, the Speaker of the House of Representatives and the President of the Senate by December 15, 2007. The second amendment removes the appropriation in the bill and provides that grants for 311 services may be awarded by DCA to the extent funds are appropriated or made available from private sources.

CHAMBER ACTION

The Transportation & Economic Development Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to governmental services telephone systems; creating s. 365.180, F.S.; providing legislative findings; defining the term "coordinated 311 nonemergency and other governmental services telephone system"; authorizing the Department of Community Affairs to accept and administer funds to provide grants for certain governmental services telephone systems; authorizing counties and municipalities to apply for grants; requiring a county or municipality to provide matching funds; providing procedures for approval of grant awards; requiring approval by the Secretary of Community Affairs or appropriation by the Legislature; providing for certain limitations on grant funds amounts; requiring a report to the Governor and the Legislature detailing expenditures; authorizing the department to adopt rules; providing application evaluation criteria; providing grants may be

awarded as appropriated or as made available from private sources; providing an effective date.

WHEREAS, in 1997, the Federal Communications Commission authorized the use of 311 as a telephone number for "nonemergency police and other governmental services," and

WHEREAS, in 2001, the Legislature authorized a 311 pilot project in chapter 2001-133, Laws of Florida, to improve the overall efficiency of 911 telephone systems and reduce 911 emergency response times, and

WHEREAS, several counties and municipalities in Florida have thus far implemented 311 telephone systems that provide a single access point to nonemergency and other governmental services, and

WHEREAS, 311 alleviates congestion on 911 circuits and helps make 911 emergency systems more efficient by diverting nonemergency calls that could impede emergency responses, and

WHEREAS, 311 has proven to be critical during hurricanes and other emergency situations and disasters by diverting many calls from 911 emergency systems and keeping 911 open and available for truly life-threatening situations, and

WHEREAS, 311 provides important information not only to citizens, but to government by providing data about the source of and the reasons for calls, and

WHEREAS, 311's greatest value is its ability to coordinate the efforts of municipalities, counties, and other state and local jurisdictions to provide an integrated, seamless single source for nonemergency and other governmental services, and

WHEREAS, 311 systems could provide mutual aid to neighboring areas by serving as backup call centers under circumstances where disaster may disable local city or county communication networks, and

WHEREAS, 911 was established to provide "rapid direct access to public safety agencies," and the Florida 211 Network was established to provide "coordination for information and referral for health and human services," and

WHEREAS, 311 serves as an effective component of unified governmental services which complements but does not duplicate the services provided by 911 and 211, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 365.180, Florida Statutes, is created to read:

365.180 Coordinated 311 nonemergency and other governmental services telephone system grant program; grants for operation; funding; approval; allocation.--

(1) The Legislature finds that a 311 telephone system for nonemergency and other governmental services may reduce the volume of nonemergency calls to 911 public safety answering points, particularly in times of a disaster. The Legislature further finds that 311 systems improve public access to government by providing seamless access to various governmental entities, enhancing coordination among state and various local jurisdictions, and improving service delivery.

(2) As used in this section, the term "coordinated 311 nonemergency and other governmental services telephone system" means a 311 system that is multijurisdictional in nature such that it is designed to provide seamless access to nonemergency and other governmental services.

(3) The Department of Community Affairs may accept and administer funds that are appropriated to it for providing grants to counties and municipalities for the operation of a coordinated 311 nonemergency and other governmental services telephone system.

(4) A county or municipality may apply for a grant of state funds to support the implementation and operation of a coordinated 311 nonemergency and other governmental services telephone system.

(5) A state grant awarded under this section must be matched by a contribution from the county or municipality in an amount equal to $1 for each $1 awarded under this section.

(6) The Department of Community Affairs shall review each application submitted under subsection (4) for a grant to implement a coordinated 311 nonemergency and other governmental services telephone system and, annually, shall submit a list of all applications received and a list of the systems that are recommended for the award of grants, arranged in order of priority, to the secretary of the Department of Community Affairs for the secretary's approval. The Department of Community Affairs may allocate grants only for coordinated 311 nonemergency and other governmental services telephone systems

that are approved by the secretary or for which funds are appropriated by the Legislature.

(7) The annual amount of any one grant made under this section may not exceed the lesser of $2.5 million or 50 percent of the total annual cost of operating the coordinated 311 nonemergency and other governmental services telephone system. The total amount of the grants awarded to a coordinated 311 nonemergency and other governmental services telephone system in a 5-year period may not exceed $10 million.

(8) Each 311 system receiving state matching funds shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2007, detailing how the funds appropriated for the 311 system were spent.

(9) The Department of Community Affairs may adopt rules pursuant to ss. 120.536(1) and 120.54 prescribing the criteria to be applied to applications for grants and rules providing for the administration of this section. The application evaluation criteria shall, at a minimum, include the following:

(a) The population of the applicant county or municipality.

(b) Prior establishment of a 311 number by the applicant county or municipality.

(c) The interoperability between the proposed 311 system and the existing 911 public safety answering points within the applicant county or municipality.

(d) The commitment of funds by the applicant county or municipality beyond the minimum match contribution.

(e) The long-range plan for sustainability of the proposed 311 system submitted by the applicant county or municipality.

Section 2. Grants for the coordinated 311 nonemergency and other governmental services telephone system grant program within the Department of Community Affairs may be awarded to the extent funds are appropriated in law or made available from private sources.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 CS Credit Counseling Services
SPONSOR(S): Hasner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	8 Y, 0 N, w/CS	Olmedillo	Carlson
2) Business Regulation Committee	17 Y, 0 N	Watson	Liepshutz
3) Finance & Tax Committee	8 Y, 0 N, w/CS	Levin	Diez-Arguelles
4) Commerce Council		Olmedillo	Randle
5)			

SUMMARY ANALYSIS

Credit counseling services generally advertise a service intended to assist people in managing their personal debt. Credit counseling services may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

This bill creates a definition for "creditor contribution" to mean any sum that a creditor agrees to contribute to a credit counseling agency towards amounts payable to the creditor by the debtor. Creditor contributions may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor.

The bill removes a cap limiting fees that may be charged to out-of-state customers.

The bill allows a debt management or credit counseling service to charge a reasonable and separate fee for insufficient funds transactions.

This bill expands the current requirement that any person engaged in debt management services or credit counseling services obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors.

Finally, the bill authorizes a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor on behalf of the debtor.

The bill does not have an effect on state revenues or expenditures. (Please see "Fiscal Analysis and Economic Impact Statement.")

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Credit counseling organizations generally advertise a service intended to assist people with managing their personal debt. Credit counseling organizations may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Credit counseling organizations may also offer individual advice for developing budgets, managing money, using credit, and building a savings plan.

Many credit counseling services offer assistance through "Debt Management Plans" (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, and provide a manageable plan for clients.

A relatively new law became effective in 2004 directly regulating credit counseling organizations.[1] However, it provides exceptions for certain persons who may engage in debt management including those in the practice of law, any person who incidentally engages in debt adjustment, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Florida Housing Finance Corporation, a bank, a bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Department of Financial Services.[2]

The credit counseling industry is subsidized by various creditors (e.g. Visa, Mastercard, etc.) through contributions made to various counseling agencies. Typically, an organization engaged in debt management services withholds amounts due to the creditor by the debtor, which the creditor treats as a contribution to an exempt organization.

Proposed Changes

This bill defines "creditor contribution" to mean any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of the debtors. However, the bill specifies that a "creditor contribution" may not reduce the amounts a debtor pays towards his or her debt. This definition ensures that consumers receive credit for 100% of the dollars that they pay for consolidation, regardless of any contributions by the credit card companies.

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[1] s. 1, ch. 2004-351., created as Part IV of Chapter ss. 817, F.S., ss.817.801-817.806, F.S.

[2] s. 817.803, F.S.

The bill clarifies that the limit on fees a credit counseling service charges does not apply to debtors residing out of Florida. This language will not prohibit a person engaged in debt management services from charging higher fees or costs to debtors located in other states than they do to Florida residents.

Furthermore, the bill clarifies that the law does not prohibit a debt management service or credit counseling service from charging a reasonable and separate fee for insufficient funds transactions.

Section 817.804, F.S., currently requires any person engaged in debt management or credit counseling services to obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors. The bill requires the audit be performed by a licensed certified public accountant in accordance with generally accepted auditing standards. It also amends the provision to specifically "include" all the above-mentioned accounts, which implies that the audit may not have covered all accounts previously.

Finally, the bill requires a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor; and it clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

C. SECTION DIRECTORY:

Section 1 amends s. 817.801, F.S., and creates the definition of "creditor contribution".

Section 2 amends s. 817.802, F.S., and removes a cap limiting fees that may be charged to out-of-state customers and clarifies that a debt management service or credit counseling service may charge a reasonable and separate fee for insufficient funds transactions.

Section 3 amends s. 817.804, F.S., and expands the current requirement that any person engaged in debt management services or credit counseling services obtain from a licensed certified public accountant an annual audit in accordance with generally accepted auditing standards of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors.

Section 4 amends s. 817.805, F.S., and requires a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor and clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

Section 5 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

This bill clarifies that the limit on fees a credit counseling serve charges does not apply to debtors residing out-of-state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Economic Development, Trade and Banking Committee adopted an amendment to the bill. The amendment removes "negotiation and settlement" from the definition of debt management services, to conform to the companion SB 1954.

This analysis has been updated to reflect the committee substitute adopted by the Economic Development, Trade and Banking Committee at its February 21, 2006 meeting.

On March 31, 2006 the Finance and Tax Committee adopted an amendment which clarified the audit requirements. The audit must comply with generally accepted auditing standards and may be performed by a licensed certified public accountant, whether licensed in Florida or another state.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to credit counseling services; amending s. 817.801, F.S.; revising and providing definitions; amending s. 817.802, F.S., relating to unlawful fees and costs; limiting application to certain debtors; amending s. 817.804, F.S.; revising annual audit requirements; amending s. 817.805, F.S.; including creditor contributions within an authorized deduction from requirements for disbursement of funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 817.801, Florida Statutes, is amended to read:

817.801 Definitions.--As used in this part:

(1) ~~(4)~~ "Credit counseling agency" means any organization providing debt management services or credit counseling services.

(2)~~(1)~~ "Credit counseling services" means confidential money management, debt reduction, and financial educational services.

(3) "Creditor contribution" means any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of debtors. However, a creditor contribution may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor.

(4)~~(2)~~ "Debt management services" means services provided to a debtor by a credit counseling organization for a fee to:

(a) Effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor; or

(b) Receive from the debtor and disburse to a creditor any money or other thing of value.

(5)~~(3)~~ "Person" means any individual, corporation, partnership, trust, association, or other legal entity.

Section 2. Section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.--

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than $50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than $120 per year for additional

consultations or, alternatively, if debt management services as defined in s. 817.801(4) ~~(2)~~(b) are provided, the person may charge the greater of 7.5 percent of the amount paid monthly by the debtor to the person or $35 per month.

(2) ~~No provision of~~ This section does not prohibit ~~prohibits~~ any person, while engaging in debt management or credit counseling services, from imposing upon and receiving from a debtor a reasonable and separate charge or fee for insufficient funds transactions.

Section 3. Paragraph (a) of subsection (1) of section 817.804, Florida Statutes, is amended to read:

817.804 Requirements; disclosure and financial reporting.--

(1) Any person engaged in debt management services or credit counseling services shall:

(a) Obtain from a licensed certified public accountant ~~licensed under s. 473.308~~ an annual audit in accordance with generally accepted auditing standards that shall include ~~of~~ all accounts of such person in which the funds of debtors are deposited and from which payments are made to creditors on behalf of debtors.

Section 4. Section 817.805, Florida Statutes, is amended to read:

817.805 Disbursement of funds.--Any person engaged in debt management or credit counseling services shall disburse to the appropriate creditors all funds received from a debtor, less any fees permitted by s. 817.802 and any creditor contributions, within 30 days after receipt of such funds. Further, any person

engaged in such services shall maintain a separate trust account for the receipt of any funds from debtors ~~each debtor~~ and the disbursement of such funds on behalf of such debtors ~~debtor~~.

Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

1

Amendment No. (1)

Bill No. **HB 667 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Hasner offered the following:

Amendment (with directory and title amendments)

Remove line(s) 30-30 and insert:

creditor on behalf of debtors.

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amend 1 HB 667

10

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

2

Amendment No. (2)

Bill No. **HB 667 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Hasner offered the following:

Amendment (with directory and title amendments)

On line 79, after the period insert:

However, a creditor contribution may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor.

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amend 2 HB 667

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 CS Damage Prevention and Safety of Underground Facilities
SPONSOR(S): Murzin
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	13 Y, 0 N, w/CS	Holt	Holt
2) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
3) Finance & Tax Committee	8 Y, 0 N, w/CS	Noriega	Diez-Arguelles
4) Commerce Council		Holt	Randle
5)			

SUMMARY ANALYSIS

The Underground Facility Damage Prevention and Safety Act provides access for excavating contractors and the public to provide notification to the free-access notification system established by the creation of the Sunshine State One-Call of Florida, Inc., (SSOCOF) of their intent to engage in excavation or demolition.

This bill amends the Underground Facility Damage Prevention and Safety Act as follows:

- Reduces the number of days that an excavator must provide certain information before beginning any excavation or demolition, from "not less than 2 or more than 5" business days to "not less than 2" business days. This bill also provides an exception to this timing requirement for excavation beneath the waters of the state. This bill increases the number of days the information provided by the excavator is valid from 20 to 30 calendar days;
- Revises notification requirements for excavators;
- Provides procedures for when a member operator receives notification from the system that excavation or demolition is planned in an area in proximity to an underground facility;
- Provides that SSOCOF does not have a duty and is not permitted to locate or mark underground facilities, and exempts SSOCOF from liability for the failure of member operators to comply with the act;
- Revises the non-criminal infraction section to:
  - Provide that court cost be added to the civil penalty;
  - Provide that when a citation is issued by a local government entity, 80 percent of the penalty is to be directed to that local government entity; and
  - Provide that SSOCOF may retain legal representation regarding citations issued under this act; and
- Provides additional exemptions for certain pest control services for certain situations where mechanized equipment is not used.

This bill has an insignificant positive fiscal impact on local government revenues.

The bill has an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the regulation of procedures that member operators and excavators must follow when providing information to and receiving notification from the free-access notification system.

Promote personal responsibility -- This bill decreases personal accountability by providing that SSOCOF is not liable for failure of a member operator to comply with the requirements of the Underground Facility Damage Prevention and Safety Act.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 93-240, L.O.F., created the "Underground Facility Damage Prevention and Safety Act" (act), and is codified at ch. 556, F.S. The purpose of this act is to:

- Aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations;
- Create a not-for-profit corporation comprised of operators of underground facilities in Florida to administer the provisions of this act;
- Fund the cost of administration through contributions from the member operators for services provided to the member operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities;
- Reserve to the state the power to regulate any subject matter specifically addressed in this act; and
- Permit any local law enforcement officer or permitting agency inspector to enforce this act without the need to incorporate the provisions of this act into any local code or ordinance.

This act established the statewide free-access notification system, which is a single toll-free number provided for persons to give notification of and intent to engage in excavation or demolition. The act also created a not-for-profit corporation, Sunshine State One-Call of Florida, Inc. (SSOCOF), established pursuant to s. 556.101(3)(c), F.S., and is comprised of Florida underground facilities operators (member operators), which administer the chapter provisions and maintain the free-access notification system (system). The cost of the system is funded "entirely and exclusively" by assessed contributions from the member operators. The act requires operators of underground facilities in the state of Florida to be a member of SSOCOF and must use and participate in the system. Excavators planning to excavate or demolish are required to provide notice and information to the system so that they do not damage or destroy any underground facilities during the excavation or demolition. Once notice is given, member operators must follow certain procedures if the area being excavated or demolished is in conflict with an area where a member operator has an underground facility.

Effect of the Bill

Legislative Intent and Purpose of the Underground Facility Damage Prevention and Safety Act

Section 556.101, F.S., provides for the legislative intent and purpose of the Underground Facility Damage Prevention and Safety Act.

The bill amends s. 556.101(2), F.S., pertaining to the legislative intent, to clarify that the SSOCOF is only the system administrator and is not required or permitted to locate or mark any underground facilities.

This bill also amends s. 556.101(3), F.S., pertaining to the purpose of the act, by deleting the phrase "permitting agency inspector" in paragraph (e) of s. 556.101(3), F.S., and provides that at the local level any law enforcement officer, government code inspector, or code enforcement officer is permitted to enforce the provisions of the act without the need to incorporate these changes into any local code or ordinance. The bill also provides that the purpose of the act is to foster awareness of federal laws and regulations that promote safety with respect to underground facilities by requiring and facilitating the advance notice of activities by those who engage in excavation or demolition operations.

Small Municipality Exception

Section 556.102(8), F.S., provides that a member operator is any person who furnishes or transports materials or services by means of an underground facility, except a small municipality that has elected not to participate in the one call notification system.[1]

Section 556.103(1), F.S., provides that each operator of an underground facility in Florida must be a member of SSOCOF, and must use and participate in the free-access notification system. There is an exception to this requirement for small cities, which may elect by January 1, 1998, not to participate in the system until January 1, 2003.

Section 556.104, F.S., provides that the free-access notification system is maintained by SSOCOF. Any person who furnishes or transports materials or services by means of an underground facility in this state must participate as a member operator of the system, "except that a small city may elect not to participate in the system."

The exception for small cities provided in ch. 556, F.S., expired January 1, 2003. This bill amends ss. 556.102(8), 556.103(1), and 556.104, F.S., to remove the exception for small municipalities from ch. 556, F.S.

Requirement that Developer Provide Information through the Free-Access Notification System

Section 556.105(1), F.S., provides that an excavator must provide certain information through the Free-Access Notification System (system) not less than 2 or more than 5 full business days before beginning any excavation or demolition. The excavator must provide the information by providing notification through the system. Under current law, the information provided by the excavator is valid for 20 calendar days after each date the information is provided to the system.

This bill amends s. 556.105(1), F.S., in the following ways:

- An excavator must provide the required information through the system not less than 2 full business days before beginning excavation or demolition;
- The excavator, along with the other information required by statute, must provide a valid electronic address, if available, to facilitate a positive response by the system;
- Provides an exception to this provision for excavation beneath the waters of the state; and
- Provides that the information provided by an excavator is valid for 30 calendar days after the date such information is provided to the system.

[1] S. 120.52(16), F.S., defines "small city" as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

Procedures of the System for When an Excavator Provides Notice

Section 556.105(3), F.S., provides that the system must provide persons who provided notification through the system with the names of the member operators who will be advised of the notification and a notification number that specifies the date and time of the notification.

This bill creates s. 556.105(4), F.S., to provide that the notification number provided to the excavator must be provided to any law enforcement officer, government code inspector, or code enforcement officer upon request.

This bill also provides that an excavator "may" instead of "shall" not demolish in an area described in the notice provided by an excavator, until all member operator underground facilities have been marked and located, or removed. This provision appears to give the excavator discretion to demolish or not demolish in areas not marked at the noticed site.

This bill also amends s. 556.105, F.S., by renumbering and correcting cross-references in ss. 556.105(4) through 556.105(11), F.S.

Required Procedures for Member Operators

Current law provides that after an excavator has provided information regarding excavation or demolition through the system, the system will provide notification to all member operators within the defined area of the proposed excavation or demolition. If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the member operator, then the member operator must follow specified notice procedures.

This bill creates s. 556.105(9), F.S., to provide that after receiving notification from the system, a member operator must provide a positive response to the system within 2 full business days, or 10 full business days for an underwater excavation, indicating the status of operations to protect the facility.

This bill deletes s. 556.105(8), F.S., providing that a member operator which determines that the excavation or demolition is not near an existing underground facility of the member operator, notify the excavator within 2 full business days after the time of the notification to the system that the excavation or demolition area is clear. This bill also removes obsolete language in s. 556.105(8)(b), F.S., related to a positive response system being implemented by January 1, 2004.

Positive-Response Communication between Operators and Excavators

This bill creates s. 556.105(9)(b), F.S., to provide that the system must establish and maintain a process to facilitate a positive-response communication between member operators and excavators. This bill provides that the system is exempt from this requirement when an excavator does not provide a valid electronic address to facilitate a positive response by the system.

This bill also creates s. 556.105(9)(c), F.S., to provide that an excavator must verify the system's positive responses before beginning excavation. If an excavator knows that an existing underground facility of a member operator is in the area, the excavator must contact the member operator if the facility is not marked and a positive response has not been received by the system.

Uniform Color Code for Utilities

This bill amends s. 556.105(10), F.S., to provide that a member operator must use the "Uniform Color Code for Utilities" of the American Public Works Association when marking the horizontal route of any underground facility of the operator.

Liability of the Member Operator, Excavator, and System

Section 556.106, F.S., provides for the liability of the member operator, excavator, and system. Section 556.106(2), F.S., provides that if a person violates s. 556.105, F.S., and performs an excavation or demolition that damages an underground facility of a member operator, there is a rebuttable presumption that the person was negligent. If found liable, the person is liable for the total sum of the losses to all member operators involved. Any damages for loss of revenue and loss of use "shall" not exceed $500,000 per affected underground facility, except that revenues lost by a governmental member operator whose revenues are used to support payments on principal and interest on bonds "shall" not be limited. If the excavator is found liable for breach of duty, any damage for loss of revenue and loss of use "shall" not exceed $500,000 per affected underground facility, except that revenues lost by a governmental member operator whose revenues are used to support payments on bonds "shall" not be limited. Section 556.106(7), F.S., also provides that an excavator who performs any excavation with hand tools under s. 556.108(5), F.S.,[2] is liable for any damage to any operator's underground facilities damaged during such excavation.

The bill deletes the term "shall" throughout both s. 556.106(2), F.S., and replaces it with "may." The bill also deletes paragraph (e) of s. 556.106(2), F.S., to remove obsolete language related to non-member small cities. The bill adds subsection (6) to provide that SSOCOF does not have a duty to mark or locate underground facilities, and a right of recovery does not exist against the SSOCOF for failing to do so. This bill clarifies that SSOCOF is not liable for the failure of a member operator to comply with the requirements of this chapter. This bill also amends s. 556.106(7), F.S., to provide that an excavator using hand tools under s. 556.108(4)(c), F.S.,[3] or s. 556.108(5), F.S., is liable for any damage to any operator's underground facilities damaged during such excavation.

Non-criminal Violations of the Act

Section 556.107, F.S., pertains to violations of the act.

The bill amends s. 556.107, F.S., to correct cross references. It further deletes the term "permitting agency inspector" and replaces it with "government code inspector" and "code enforcement officer." These two new terms, along with the current language "local or state law enforcement officer," specify the enforcement for this chapter.

Civil Penalties

Section 556.107(1)(b), F.S., provides that citations may be issued to any employee of the excavator or member operator who is directly involved in the noncriminal infraction. Section 556.107(1)(c), F.S., provides that any excavator or member operator who commits a noncriminal infraction provided under this section may be required to appear before the county court. The civil penalty for any such infraction is $250, except as otherwise provided in this section.

This bill amends s. 556.107(1)(b), F.S., to provide that citations "shall" be "hand-delivered" to any employee of the excavator or member operator who is involved in the noncriminal infraction. This bill also provides that the citation shall be issued in the name of the excavator or member operator, whichever is applicable. This bill also amends s. 556.107(1)(c), F.S., to add court costs to the civil penalty. The bill also provides that if a local law enforcement officer, local government code inspector, or code enforcement officer issues the citation, an 80/20 split of the collected penalty occurs. This bill takes 80 percent of the $250 fine that would go into the fine and forfeiture fund, and authorizes the

[2] Section 556.108(5), F.S., provides an exemption to the notification requirements pursuant to the Act, however an excavator is still liable for damage caused.

[3] Section 556.108(4)(c), F.S., is created by this bill and is an exemption for any excavation of 18 inches or less for locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility and if mechanized equipment is not used.

clerk to distribute it to the local government entity whose employee issued the citation. The remaining 20 percent is retained by the clerk of court for administrative costs, in addition to other court costs, and shall be distributed into the fine and forfeiture fund as required by s. 142.01, F.S.[4] In addition, if a state law enforcement officer issues the citation, the amount collected by the clerk shall be retained by the clerk for deposit into the fine and forfeiture fund.

The bill amends ss. 556.107(d), (e), and (f), F.S., to add court costs to the civil penalty provided under this section.

This bill amends s. 556.107(e), F.S., to provide that payment of the civil penalty and court costs are due within 30 days instead of 10 days.

The bill creates paragraph (i) in s. 556.107(1), F.S., to provide that the SSOCOF may, at its own cost, retain legal representation as assistance in county court proceedings pertaining to citations issued under this section. SSOCOF may also appear in infraction cases appealed to the circuit court, and the appellant in such appeals shall timely notify SSOCOF of appeals under this section.

Misdemeanors

Section 556.107(2), F.S., provides that any person who knowingly and willfully removes or destroys the valid stakes or other valid physical markings used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree. For purposes of this section, the stakes and markings are valid for 20 calendar days.

This bill amends s. 556.107(2), F.S., to extend the validity of stakes and markings from 20 days to 30 days.

Exemptions

Section 556.108, F.S., provides several exemptions to the notification requirements under the act. Section 556.108(1), F.S., provides an exemption for any excavation or demolition performed by the owner of single-family residential property. Section 556.108(4), F.S., provides an exemption for any excavation of 18 inches or less for surveying on public or private land by surveyors or mappers and certain maintenance activities performed by a state agency.

This bill amends s. 556.108(1), F.S., to provide an exception to the exemption for owners of a single-family residential property. This bill provides that the exemption will not apply to "property that is subdivided or is to be subdivided into more than one single-family residential property." The bill amends s. 556.108(4)(a), F.S., to provide that pest control services are included in the exemption for any excavation of 18 inches or less. This bill creates s. 556.108(4)(c), F.S., to provide another exemption under that subsection for "locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility, and if mechanized equipment is not used."

Applicability to Existing Law

Section 556.111(3), F.S., provides that the act does not preempt a governmental member operator from reasonable regulation of its right-of-way.

[4] 142.01 Fine and forfeiture fund; clerk of the circuit court.—There shall be established by the clerk of the circuit court in each county of this state a separate fund to be known as the fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions.

This bill amends s. 556.111(3), F.S., to clarify that the provisions of this subsection do not relieve governmental entities from other provisions of the act, specifically the responsibility to provide notice of excavation, mark underground facilities, or comply with other specific requirements of the statutory scheme to prevent damage to underground facilities.

C. SECTION DIRECTORY:

Section 1. Amends s. 556.101, F.S., pertaining to legislative intent and the purpose of the act.

Section 2. Amends s. 556.102(8), F.S., which addresses the definition of "member operator," by removing language pertaining to small municipalities.

Section 3. Amends s. 556.103(1), F.S., to remove language pertaining to small cities being able to opt out of using and participating in the free-access notification system. Removes obsolete language providing that the not-for-profit corporation be formed by June 1, 1993.

Section 4. Amends s. 556.104, F.S., to remove language pertaining to small cities being able to opt out of using and participating in the free-access notification system.

Section 5. Amends s. 556.105, F.S., to revise procedures for an excavator who is providing information to the system before beginning any excavation or demolition, and procedures for member operators when they receive notification from the system.

Section 6. Amends s. 556.106, F.S., relating to the liability of the member operator, excavator, and system, and removes obsolete language pertaining to non-member small cities.

Section 7. Amends s. 556.107, F.S., relating to violations under the act.

Section 8. Amends s. 556.108, F.S., relating to exemptions to the notification requirements.

Section 9. Amends s. 556.111(3), F.S., relating to applicability to existing law.

Section 10. Amends s. 337.401(3), F.S., correcting a cross-reference relating to use of right-of-way for utilities subject to regulation, permit, and fees.

Section 11. Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill will have an insignificant positive fiscal impact on local government revenues from the addition of court costs to the fines imposed under s. 556.107, F.S. SEE FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill will have an indeterminate impact on local governments due to the provisions of the bill that transfer 80 percent of fine revenues from the clerk's fine and forfeiture trust fund to the local government that employs the person issuing the citation.

The total applicable court costs for the violations addressed in this bill are $5 per violation. Section 938.01, F.S., requires every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance to pay $3 as a court cost. This amount is deposited into the Additional Court Cost Clearing Trust Fund.

Also, s. 938.15, F.S., states that in addition to the costs provided for in s. 938.01, F.S., municipalities and counties may assess an additional $2 for expenditures for criminal justice education degree programs and training courses for local funding.

SSOCOF officials have indicated that their enforcement responsibilities are fulfilled by off-duty personnel in 16 Florida counties. Since January 2005, 27 citations have been issued by the SSOCOF resulting in total fines of less than $7,000. However, SSOCOF officials also indicate that the number of citations may increase because there is money in their budget to allow for the hiring of additional off-duty personnel to enforce the provisions of chapter 556, F.S.

In addition, SSOCOF officials have stated that a number of Florida counties have hired their own full-time personnel for enforcement purposes. Notably, approximately 215 citations have been issued in Palm Beach County during the past two years, resulting in a fiscal impact of less than $50,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Committee on Utilities and Telecommunications adopted two amendments. The amendments made the following revisions to the bill:

- Provided that the civil penalty collected from citations issued by a state law enforcement officer shall be retained by the clerk of court and deposited into the fine and forfeiture fund established pursuant to s. 142.01, F.S.;
- For any person charged with a noncriminal infraction under paragraph (a) of s. 556.107(1), F.S., unless required to appear before the county court, the amendment increased the timeframe for payment from 10 days to 30 days;
- Created a notification exemption for services performed by a pest control licensee under chapter 482, F.S., for excavation of 18 inches or less if mechanized equipment is not used; and
- Created a notification exemption for any excavation or related maintenance activity by a water control district created pursuant to chapter 298, F.S., or special act, provided specific criteria are met.

The bill was then reported favorably with a committee substitute.

On March 15, 2006, the Civil Justice Committee adopted six amendments to this bill. The amendments made the following revisions to the bill:

- Provided that the purpose of the Underground Facility Damage Prevention and Safety Act is to foster the awareness of federal laws and regulations that promote safety with respect to underground facilities by requiring advance notice of activities by those who engage in excavation or demolition operations;
- Provided that an excavator who performs any excavation with hand tools under s. 556.1108(4)(c), F.S., is liable for any damage to any operator's underground facilities damaged during such excavation;
- Required that citations must be hand-delivered to any employee of the excavator or member operator who is involved in the non-criminal infraction. Also, requires that the citation must be issued in the name of the excavator or member operator;
- Removed the "fees" from the civil penalty for any infraction under s. 556.107(a), F.S.;
- Provided that the exemption for excavations performed for owners of single-family residences does not apply to excavations in connection with subdivisions involving multiple single-family residences;
- Provided that the exemption to the notification requirements will not apply if the excavation is 18 inches or less and for locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground facility, "if the excavator performing such work for the current owner or future owner of the underground facility." Also, replaces "public utility facility" with "public underground facility"; and
- Removed the exemption for any excavation or related maintenance activity by a water control district created under ch. 298, F.S., or by special act if certain conditions are met.

The bill was then reported favorably with a committee substitute.

On March 31, 2006, the Finance and Tax Committee adopted one amendment to the bill. This amendment clarified that authority over right-of-way does not relieve local governmental member operators of the requirements of chapter 556, F.S., specifically the responsibility to provide notice of excavation, mark underground facilities, or comply with other specific requirements of the statutory scheme to prevent damage to underground facilities.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendment adopted by the Finance and Tax Committee.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to damage prevention and safety for underground facilities; amending s. 556.101, F.S.; providing legislative intent that Sunshine State One-Call of Florida, Inc., is not required or permitted to locate or mark underground facilities; revising purposes of the Underground Facility Damage Prevention and Safety Act; amending s. 556.102, F.S.; correcting a reference; redefining the term "member operator" to remove an exception for a small municipality that elects not to participate in the notification system; amending ss. 556.103 and 556.104, F.S.; deleting provisions exempting a small city from membership in the Sunshine State One-Call of Florida, Inc.; amending s. 556.105, F.S.; requiring that specified information be placed in the excavation notification system; providing an exception for underwater excavations; providing that the information is valid for 30 calendar days; requiring that a notification number assigned to an excavator be provided to a law enforcement

officer, government code inspector, or code enforcement officer upon request; requiring that a member operator respond to the system within a specified time indicating the status of its facility protection operations; requiring the corporation to establish a communication system between member operators and excavators; requiring an excavator to verify the system's positive responses before beginning excavation; requiring operators to use a specified color-code manual; amending s. 556.106, F.S.; providing that the notification system has no duty to and may not mark or locate underground facilities; providing that a person has no right of recovery against the notification system for failing to mark or locate underground facilities; providing that the system is not liable for the failure of a member operator to comply with the requirements of the act; amending s. 556.107, F.S.; correcting cross-references; providing for the distribution of civil penalties; revising procedures for disposition of citations; authorizing the corporation to retain legal counsel to represent the corporation in certain legal proceedings; amending s. 556.108, F.S.; revising provisions that exempt excavation or demolition by the owner of residential property from specified notification requirements to exclude certain property that is subdivided or to be subdivided; providing that certain excavations are exempt from mandatory location notification if mechanized equipment is not used; exempting pest control services under certain

circumstances; amending s. 556.111, F.S.; providing that specified applicability provisions do not exempt a local governmental member operator from specified provisions that apply to the member operator; amending s. 337.401, F.S.; correcting a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 556.101, Florida Statutes, is amended to read:

556.101 Short title; legislative intent.--

(1) This chapter ~~act~~ may be cited as the "Underground Facility Damage Prevention and Safety Act."

(2) It is the intent of the Legislature to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition. This notification system shall provide the member operators an opportunity to identify and locate their underground facilities. Under this notification system, Sunshine State One-Call of Florida, Inc., is not required or permitted to locate or mark underground facilities.

(3) It is the purpose of this chapter ~~act~~ to:

(a) Aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations.

(b) Create a not-for-profit corporation comprised of operators of underground facilities in this state to administer ~~the provisions of~~ this chapter ~~act~~.

(c) Fund the cost of administration through contributions from the member operators for services provided to the member operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities.

(d) Reserve to the state the power to regulate any subject matter specifically addressed in this chapter ~~act~~.

(e) Permit any local law enforcement officer, local government code inspector, or code enforcement officer ~~or permitting agency inspector~~ to enforce this chapter ~~act~~ without the need to incorporate the provisions of this chapter ~~act~~ into any local code or ordinance.

(f) Foster the awareness of federal laws and regulations that promote safety with respect to underground facilities, including, but not limited to, the Federal Pipeline Safety Act of 1968, as amended, the Pipeline Safety Improvement Act of 2002, OSHA Standard 1926.651, and the National Electric Safety Code, ANSI C-2, by requiring and facilitating the advance notice of activities by those who engage in excavation or demolition operations.

(4) It is not the purpose of this chapter ~~act~~ to amend or void any permit issued by a state agency for placement or maintenance of facilities in its right-of-way.

Section 2. Subsection (8) of section 556.102, Florida Statutes, is amended to read:

556.102 Definitions.--As used in this act:

(8) "Member operator" means any person who furnishes or transports materials or services by means of an underground facility ~~except a small municipality that has elected not to participate in the one-call notification system in the manner set forth in s. 556.103(1)~~.

Section 3. Subsection (1) of section 556.103, Florida Statutes, is amended to read:

556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.--

(1) The "Sunshine State One-Call of Florida, Inc." is ~~hereby~~ created as a not-for-profit corporation. Each operator of an underground facility in this state shall be a member of the corporation and shall use and participate in the system~~, except that a small city as defined in s. 120.52 may elect by January 1, 1998, not to participate in the system until January 1, 2003, through a written notification identifying any reasons for declining membership. The corporation shall be formed by June 1, 1993~~. The corporation shall administer the provisions of this chapter ~~act~~. The corporation shall exercise its powers through a board of directors established pursuant to this section.

Section 4. Section 556.104, Florida Statutes, is amended to read:

556.104 Free-access notification system.--The corporation shall maintain a free-access notification system. Any person who furnishes or transports materials or services by means of an underground facility in this state shall participate as a member operator of the system ~~except that a small city as defined in s.~~

~~120.52 may elect not to participate in the system in the manner set forth in s. 556.103(1)~~. The purpose of the system is to receive notification of planned excavation or demolition activities and to notify member operators of the ~~such~~ planned excavation or demolition activities. The system shall provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities, and the system may also provide additional modes of access at no cost to the user.

Section 5. Section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.--

(1)(a) Not less than 2 ~~nor more than 5~~ full business days before beginning any excavation or demolition, except an excavation beneath the waters of the state, an excavator shall provide the following information through the system:

1. The name of the individual who provided notification and the name, address, including the street address, city, state, zip code, and telephone number of her or his employer.

2. The name and telephone number of the representative for the excavator, and a valid electronic address to facilitate a positive response by the system should be provided, if available.

3. The county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed, and the construction limits of the excavation or demolition.

4. The commencement date and anticipated duration of the excavation or demolition.

5. Whether machinery will be used for the excavation or demolition.

6. The person or entity for whom the work is to be done.

7. The type of work to be done.

8. The approximate depth of the excavation.

(b) The excavator shall provide the ~~such~~ information by notifying the system through its free-access notification system during business hours, as determined by the corporation, or by such other method as authorized by the corporation. Any notification received by the system at any time other than during business hours shall be considered to be received at the beginning of the next business day.

(c) Information provided by an excavator is ~~shall be considered~~ valid for 30 ~~a period of 20~~ calendar days after the ~~each~~ date such information is provided to the system. In computing the period for which information furnished is ~~considered~~ valid, the date the notice is provided is ~~shall~~ not ~~be~~ counted, but the last day of the ~~such~~ period shall be counted unless it is a Saturday, Sunday, or a legal holiday, in which event, the period runs ~~shall run~~ until the end of the next day that ~~which~~ is not a Saturday, Sunday, or a legal holiday.

(2) Each notification by means of the system shall be recorded to document compliance with this chapter ~~act~~. Such record may be made by means of electronic, mechanical, or any other method of all incoming and outgoing wire and oral communications concerning location requests in compliance with

chapter 934. The ~~Such~~ records shall be kept for ~~a period of~~ 5 years and, upon written request, shall be available to the excavator making the request, the member operator intended to receive the request, and their agents. However, custody of the records may ~~shall~~ not be transferred from the system except under subpoena.

(3) The system shall provide the person who provided notification with the names of the member operators who shall ~~will~~ be advised of the notification and a notification number that ~~which~~ specifies the date and time of the notification.

(4) The notification number provided to the excavator under this section shall be provided to any law enforcement officer, government code inspector, or code enforcement officer upon request.

(5) ~~(4)~~ All member operators within the defined area of a proposed excavation or demolition shall be promptly notified through the system, except that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate the ~~such~~ facilities.

(a) When an excavation site cannot be described in information provided under subparagraph (1)(a)3. with sufficient particularity to enable the member operator to ascertain the excavation site, and if the excavator and member operator have not mutually agreed otherwise, the excavator shall premark the proposed area of the excavation before a member operator is required to identify the horizontal route of its underground

facilities in the proximity of any excavation. However, premarking is not required for any excavation that is over 500 feet in length and is not required where the premarking could reasonably interfere with traffic or pedestrian control.

(b) If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the member operator, except a facility beneath the waters of the state, which is governed by paragraph (c), the member operator shall identify the horizontal route by marking to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means within 2 full business days after the time the notification is received under subsection (1). If the member operator is unable to respond within such time, the member operator shall communicate with the person making the request and negotiate a new schedule and time that is agreeable to, and should not unreasonably delay, the excavator.

(c) If a member operator determines that a proposed excavation is in proximity to or in conflict with an underground facility of the member operator beneath the waters of the state, the member operator shall identify the estimated horizontal route of the underground facility, within 10 business days, using marking buoys or other suitable devices, unless directed otherwise by an agency having jurisdiction over the waters of the state under which the member operator's underground facility is located.

(d) When excavation is to take place within a tolerance zone, an excavator shall use increased caution to protect underground facilities. The protection requires hand digging, pot holing, soft digging, vacuum excavation methods, or other similar procedures to identify underground facilities. Any use of mechanized equipment within the tolerance zone must be supervised by the excavator.

(6)(a) ~~(5)(a)~~ An excavator shall avoid excavation in the area described in the notice given under ~~pursuant to~~ subsection (1) until each member operator underground facility has been marked and located or until the excavator has been notified that no member operator has underground facilities in the area described in the notice, or for the time allowed for markings set forth in paragraphs (5)(b) ~~(4)(b)~~ and (c), whichever occurs first. If a member operator has not located and marked its underground facilities within the time allowed for marking set forth in paragraphs (5)(b) ~~(4)(b)~~ and (c), the excavator may proceed with the excavation, if ~~provided~~ the excavator does so with reasonable care~~,~~ and if ~~provided, further, that~~ detection equipment or other acceptable means to locate underground facilities are used.

(b) An excavator may ~~shall~~ not demolish in the area described in the notice given under ~~pursuant to~~ subsection (1) until all member operator underground facilities have been marked and located~~,~~ or removed.

(7)(a) ~~(6)(a)~~ A member operator that states that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements of

paragraphs (5)(b) ~~(4)(b)~~ and (c), but shall provide the best available information to the excavator in order to comply with the requirements of this section. An excavator is not liable for any damage to an underground facility under the exemption in this subsection if the excavation or demolition is performed with reasonable care and detection equipment or other acceptable means to locate underground facilities are used.

(b) A member operator may not exercise the exemption provided by this subsection if the member operator has underground facilities that have not been taken out of service and that are locatable using available designating technologies to locate underground facilities.

(8)(a) ~~(7)(a)~~ If extraordinary circumstances exist, a member operator shall notify the system of the member operator's inability to comply with this section. For the purposes of this section, the term "extraordinary circumstances" means circumstances other than normal operating conditions that ~~which~~ exist and make it impractical for a member operator to comply with ~~the provisions of~~ this chapter ~~act~~. After the system has received notification of a member operator's inability to comply, the system shall make that information known to excavators who subsequently notify the system of an intent to excavate. The member operator is relieved of responsibility for compliance under the law during the period that the extraordinary circumstances exist and shall promptly notify the system when the extraordinary circumstances cease to exist.

(b) During the period when extraordinary circumstances exist, the system shall remain available during business hours

to provide information to governmental agencies, member operators affected by the extraordinary circumstances, and member operators who can provide relief to the affected parties, unless the system itself has been adversely affected by extraordinary circumstances.

(9)(a) After receiving notification from the system, a member operator shall provide a positive response to the system within 2 full business days, or 10 such days for an underwater excavation, indicating the status of operations to protect the facility.

~~(8)(a) If a member operator determines that the excavation or demolition is not near an existing underground facility of the member operator, the member operator shall notify the excavator within 2 full business days after the time of the notification to the system that no conflict exists and that the excavation or demolition area is clear. An excavator who has knowledge of the existence of an underground facility of a member operator in the area is responsible for contacting the member operator if a facility is not marked.~~

(b) The system shall establish and maintain a process to facilitate a positive-response communication between member operators and excavators. The system is exempt from any requirement to initiate a positive response to an excavator when an excavator does not provide a valid electronic address to facilitate a positive response by the system.

(c) An excavator shall verify the system's positive responses before beginning excavation. If an excavator knows that an existing underground facility of a member operator is in

the area, the excavator must contact the member operator if the facility is not marked and a positive response has not been received by the system. ~~The system shall implement procedures for positive response by January 1, 2004.~~

(10) ~~(9)~~ A member operator shall use the "Uniform Color Code for Utilities" ~~recommended guidelines for uniform temporary marking of underground facilities as approved by the Utility Location and Coordinating Council~~ of the American Public Works Association when marking the horizontal route of any underground facility of the operator.

(11) ~~(10)~~ Before ~~Prior to~~ or during excavation or demolition, if the marking of the horizontal route of any facility is removed or is no longer visible, the excavator shall stop excavation or demolition activities in the vicinity of the facility and shall notify the system to have the route remarked.

(12) ~~(11)~~ If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.

Section 6. Subsection (2) of section 556.106, Florida Statutes, is amended, present subsection (6) is redesignated as

subsection (7) and amended, and a new subsection (6) is added to that section, to read:

556.106 Liability of the member operator, excavator, and system.--

(2)(a) If a ~~In the event any~~ person violates s. 556.105(1) or (6) ~~(5)~~, and subsequently, whether by himself or herself or through the person's employees, contractors, subcontractors, or agents, performs an excavation or demolition that ~~which~~ damages an underground facility of a member operator, it is ~~shall be~~ rebuttably presumed that the ~~such~~ person was negligent. The ~~Such~~ person, if found liable, is ~~shall be~~ liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use may ~~shall~~ not exceed $500,000 per affected underground facility, except that revenues lost by a governmental member operator whose~~, which~~ revenues are used to support payments on principal and interest on bonds may~~, shall~~ not be limited. Any liability of the state and its agencies and its subdivisions which arises out of this chapter is ~~shall be~~ subject to the provisions of s. 768.28.

(b) If any excavator fails to discharge a duty imposed by the provisions of this chapter ~~act~~, the ~~such~~ excavator, if found liable, is ~~shall be~~ liable for the total sum of the losses to all parties involved as those costs are normally computed. Any damage for loss of revenue and loss of use may ~~shall~~ not exceed $500,000 per affected underground facility, except that revenues lost by a governmental member operator whose~~, which~~ revenues are

used to support payments on principal and interest on bonds may~~,~~ ~~shall~~ not be limited.

(c) Any liability of the state, its agencies, or its subdivisions which arises out of this chapter is ~~act shall be~~ subject to the provisions of s. 768.28.

(d) Obtaining information as to the location of an underground facility from the member operator as required by this chapter ~~act~~ does not excuse any excavator from performing an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices, and it ~~nor~~ does not ~~it~~ excuse the ~~such~~ excavator from liability for any damage or injury resulting from any excavation or demolition.

~~(e) When an excavator knows or should know of the presence of an underground facility of a nonmember small city as defined in s. 120.52, he or she shall make reasonable efforts to contact the small city that owns or operates that facility prior to commencing an excavation or demolition.~~

(6) The system does not have a duty to mark or locate underground facilities and may not do so, and a right of recovery does not exist against the system for failing to mark or locate underground facilities. The system is not liable for the failure of a member operator to comply with the requirements of this chapter.

(7)~~(6)~~ An excavator who performs any excavation with hand tools under ~~pursuant to~~ s. 556.108(4)(c) or (5) is liable for any damage to any operator's underground facilities damaged during such excavation.

Section 7. Section 556.107, Florida Statutes, is amended to read:

556.107 Violations.--

(1) NONCRIMINAL INFRACTIONS.--

(a) Violations of the following provisions are noncriminal infractions:

1. Section 556.105(1), relating to providing required information.

2. Section 556.105(6) ~~556.105(5)~~, relating to the avoidance of excavation.

3. Section 556.105(11) ~~556.105(10)~~, relating to the need to stop excavation or demolition.

4. Section 556.105(12) ~~556.105(11)~~, relating to the need to cease excavation or demolition activities.

5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by any local or state law enforcement officer, government code inspector, or code enforcement officer ~~permitting agency inspector~~, and the issuer of a citation may require an ~~any~~ excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this chapter ~~act~~. Citations shall ~~may~~ be hand-delivered ~~issued~~ to any employee of the excavator or member operator who is ~~directly~~ involved in the noncriminal infraction.

The citation shall be issued in the name of the excavator or member operator, whichever is applicable.

(c) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be required to appear before the county court. The civil penalty for any such infraction is $250 plus court costs, except as otherwise provided in this section. If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court shall be distributed to the local governmental entity whose employee issued the citation and 20 percent of the penalty shall be retained by the clerk to cover administrative costs, in addition to other court costs. If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk shall be retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01. Any person who fails to appear or otherwise properly respond to a citation issued pursuant to paragraph (d) shall, in addition to the citation, be charged with the offense of failing to respond to such citation and, upon conviction, commits ~~be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time any citation is issued pursuant to paragraph (b).

(d) Any person cited for an infraction under paragraph (a), unless required to appear before the county court, may:

1. Post a bond, which shall be equal in amount to the applicable civil penalty plus court costs; or

2. Sign and accept a citation indicating a promise to appear before the county court.

The person issuing the citation ~~officer~~ may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(e) Any person charged with a noncriminal infraction under paragraph (a), unless required to appear before the county court, may:

1. Pay the civil penalty plus court costs, in lieu of appearance, either by mail or in person, within 30 ~~10~~ days after the date of receiving the citation; or

2. Forfeit bond, if a bond has been posted, by not appearing at the designated time and location.

If the person cited follows either of the above procedures, she or he is ~~shall be~~ deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. The ~~Such~~ admission may be used as evidence in any other proceeding under this chapter ~~act~~.

(f) Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed $5,000 plus court costs. In determining the amount

of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a hearing under this chapter, the commission of a charged infraction must be proven by a preponderance of the evidence.

(h) If a person is found by the hearing official to have committed an infraction, the ~~such~~ person may appeal that finding to the circuit court.

(i) Sunshine State One-Call of Florida, Inc., may, at its own cost, retain an attorney to assist in the presentation of relevant facts and law in the county court proceeding pertaining to the citation issued under this section. The corporation may also appear in any case appealed to the circuit court if a county court finds that an infraction of the chapter was committed. An appellant in the circuit court proceeding shall timely notify the corporation of any appeal under this section.

(2) MISDEMEANORS.--Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(5)(b) ~~s. 556.105(4)(b)~~ and (c) used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 ~~20~~ calendar days after information is provided to the system under s. 556.105(1)(c).

Section 8. Subsections (1), (4), and (5) of section 556.108, Florida Statutes, are amended to read:

556.108 Exemptions.--The notification requirements provided in s. 556.105(1) do not apply to:

(1) Any excavation or demolition performed by the owner of a single-family residential property, not including property that is subdivided or is to be subdivided into more than one single-family residential property; or for such owner by a member operator or an agent of a member operator when such excavation or demolition is made entirely on such land, and only up to a depth of 10 inches; provided due care is used and there is no encroachment on any member operator's right-of-way, easement, or permitted use.

(4) Any excavation of 18 inches or less for:

(a) Surveying public or private property by surveyors or mappers as defined in chapter 472 and services performed by a pest control licensee under chapter 482, excluding marked rights-of-way, marked easements, or permitted uses where marked, if ~~provided~~ mechanized equipment is not used in the process of such surveying or pest control services and the surveying or pest control services are ~~is~~ performed in accordance with the practice rules established under s. 472.027 or s. 482.051, respectively; ~~or~~

(b) Maintenance activities performed by a state agency and its employees when such activities are within the right-of-way of a public road; however, ~~provided,~~ if a member operator has permanently marked facilities on such right-of-way, ~~no~~ mechanized equipment may not be used without first providing notification; or

(c) Locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground utility facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility and if mechanized equipment is not used.

(5)(a) Any excavation with hand tools by a member operator or an agent of a member operator for:

1.~~(a)~~ Locating, repairing, connecting, or protecting, or routine maintenance of, the member operator's underground facilities; or

2.~~(b)~~ The extension of a member operator's underground facilities onto the property of a person to be served by such facilities.

(b)~~(c)~~ The exemption provided in this subsection ~~paragraphs (a) and (b)~~ is limited to excavations to a depth of 30 inches if the right-of-way has permanently marked facilities of a company other than the member operator or its agents performing the excavation.

Section 9. Subsection (3) of section 556.111, Florida Statutes, is amended to read:

556.111 Applicability to existing law.--Nothing in this act shall be construed to:

(3) Preempt a governmental member operator from reasonable regulation of its right-of-way. This subsection does not exempt a municipality, county, district, or other local governmental member operator from the provisions of this chapter that apply to the member operator.

Section 10. Paragraph (c) of subsection (3) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.--

(3)

(c)1. It is the intention of the state to treat all providers of communications services that use or occupy municipal or charter county roads or rights-of-way for the provision of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees. Certain providers of communications services have been granted by general law the authority to offset permit fees against franchise or other fees while other providers of communications services have not been granted this authority. In order to treat all providers of communications services in a nondiscriminatory and competitively neutral manner with respect to the payment of permit fees, each municipality and charter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and must inform the Department of Revenue of the election by certified mail by July 16, 2001. Such election shall take effect October 1, 2001.

a.(I) The municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way. All fees permitted under this sub-subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct

administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a municipality or charter county under this sub-subparagraph may not exceed $100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(a)2. ~~(b)~~ or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

(II) To ensure competitive neutrality among providers of communications services, for any municipality or charter county that elects to exercise its authority to require and collect permit fees under this sub-subparagraph, the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20, shall automatically be reduced by a rate of 0.12 percent.

b. Alternatively, the municipality or charter county may elect not to require and collect permit fees from any provider

of communications services that uses or occupies municipal or charter county roads or rights-of-way for the provision of communications services; however, each municipality or charter county that elects to operate under this sub-subparagraph retains all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a municipality or charter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20 for that municipality or charter county may be increased by ordinance or resolution by an amount not to exceed a rate of 0.12 percent. If a municipality or charter county elects to increase its rate effective October 1, 2001, the municipality or charter county shall inform the department of such increased rate by certified mail postmarked on or before July 16, 2001.

c. A municipality or charter county that does not make an election as provided for in this subparagraph shall be presumed to have elected to operate under the provisions of sub-subparagraph b.

2. Each noncharter county shall make an election under either sub-subparagraph a. or sub-subparagraph b. and shall inform the Department of Revenue of the election by certified mail by July 16, 2001. Such election shall take effect October 1, 2001.

a. The noncharter county may elect to require and collect permit fees from any providers of communications services that use or occupy noncharter county roads or rights-of-way. All fees

permitted under this sub-subparagraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee permitted under this sub-subparagraph may not: be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not permitted under this sub-subparagraph, the prevailing party may recover court costs and attorney's fees at trial and on appeal. In addition to the limitations set forth in this section, a fee levied by a noncharter county under this sub-subparagraph may not exceed $100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5)(a)2.~~(b)~~ or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way.

b. Alternatively, the noncharter county may elect not to require and collect permit fees from any provider of communications services that uses or occupies noncharter county roads or rights-of-way for the provision of communications services; however, each noncharter county that elects to operate

under this sub-subparagraph shall retain all authority to establish rules and regulations for providers of communications services to use or occupy roads or rights-of-way as provided in this section. If a noncharter county elects to operate under this sub-subparagraph, the total rate for the local communications services tax as computed under s. 202.20 for that noncharter county may be increased by ordinance or resolution by an amount not to exceed a rate of 0.24 percent, to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services. If a noncharter county elects to increase its rate effective October 1, 2001, the noncharter county shall inform the department of such increased rate by certified mail postmarked on or before July 16, 2001.

c. A noncharter county that does not make an election as provided for in this subparagraph shall be presumed to have elected to operate under the provisions of sub-subparagraph b.

3. Except as provided in this paragraph, municipalities and counties retain all existing authority to require and collect permit fees from users or occupants of municipal or county roads or rights-of-way and to set appropriate permit fee amounts.

Section 11. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **789 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Murzin offered the following:

Amendment (with directory and title amendments)

Between line(s) 184 and 185 insert:

(d) The system shall study the feasibility of the establishment or recognition of zones within which no underground facilities are located for the purpose of allowing excavation within such zones to be undertaken without notice to the system as now required by this act. The system shall report the results of the study to the Legislature on or before February 1, 2007, along with recommendations for further legislative action.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 22 and insert:

30 calendar days; requiring a study; requiring a notification number

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 817 CS Telecommunications Carriers of Last Resort
SPONSOR(S): Murzin
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1544

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	16 Y, 0 N, w/CS	Cater	Holt
2) Business Regulation Committee	14 Y, 0 N	Watson	Liepshutz
3) Civil Justice Committee	7 Y, 0 N	Blalock	Bond
4) Commerce Council		Cater	Randle
5)			

SUMMARY ANALYSIS

Current law provides that, "until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.

This bill amends s. 364.025, F.S., to provide that a local exchange telecommunications company (LEC), with carrier-of-last resort (COLR) obligations, is relieved of providing basic local telecommunications service to business or residential buildings or developments, when circumstances exist that prevented or impeded it from connecting with the occupants.

This bill requires a LEC, with COLR obligations, to give timely notice to the PSC when circumstances exist that prevent or impede it from providing basic local exchange telecommunications service (basic service) to the occupants of building or development. If its COLR obligation is not automatically relieved, a LEC can petition the PSC for a waiver of this obligation based on the facts and circumstances of the provision of service on the party.

This bill also requires the COLR obligation to go back into effect if the circumstances for automatic relief no longer exist and the owner or developer of the property has no intention to arrange for communication service for another provider. The bill allows the LEC to recover from the developer, reasonable costs in excess of the LECs costs if it had initially provided service.

The bill does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill provides an exemption to a local exchange telecommunications company with carrier-of-last resort (COLR) obligations, when circumstances exist that prevented or impeded it from providing basic service to the occupants of a business or residential multi-tenant building or development.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 364.025(1), F.S., provides that, "[U]ntil January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service[1] within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies[2] have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.[3]

The current law does not provide for waiver of the COLR obligations. However, s. 364.01(4)(f), F.S., provides the PSC with authority to eliminate rules and regulations that delay or impair the transition to competition.

Local exchange telecommunications companies with COLR obligations have encountered situations in multi-tenant structures and developments that have prevented or impeded them from providing basic service to the occupants (end-use customers). Either before or after a LEC begins provisioning activities to serve these end-use customers, the property owner either enters into an exclusive arrangement with another carrier and prohibits the COLR from installing facilities and/or providing service, or the property owner enters into an agreement with another communications provider where the property owner collects money from the tenants to cover the cost of the alternative communications services. However, the LEC still has its COLR obligation; and when these situations have occurred, the LEC has notified the PSC of these "locked out" situations.

On December 16, 2005, BellSouth Telecommunications, Inc., a COLR, petitioned the PSC for Waiver of Rules 25-4.066 and 25-4.067, F.A.C. and Petition to Initiate Rulemaking (Petition). BellSouth seeks relief relate to service installation intervals and line extension cost recovery which have been established, in part, to implement its COLR obligation. BellSouth's rulemaking request is to permit a waiver of the rules relating only to multi-tenant establishments and subdivisions where owners or developers have sought to limit the ability of COLRs to serve the occupants of such locations. The PSC has not ruled on the Petition.

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[1] Section 364.02(1), F.S., defines "basic local telecommunications service" as voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

[2] Section 364.02(8), F.S., defines "local exchange telecommunications company" as any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

[3] S. 25-4.066, F.A.C., Availability of Service.

Effect of Bill

This bill amends s. 364.025, F.S., to provide an exemption to local exchange telecommunications companies, with carrier-of-last resort (COLR) obligations. The exemption relieves them of providing basic service only to business or residential buildings or developments, when circumstances exist that prevented or impeded them from connecting with the occupants. The bill provides definitions and establishes criteria under which the exemption is applicable.

The bill defines the following terms:

- "Owner or developer" as the owner or developer of a multi-tenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.
- "Communications service provider" includes any person or entity providing communications services or allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.
- "Communications service" means voice service or voice replacement service.

This bill establishes criteria whereby a LEC, with COLR obligations, may be relieved of its obligations to provide basic service to any customers in a multi-tenant business or residential property (including, but not limited to, apartments, condominiums, subdivisions, office buildings or office parks), when the owner or developer:

- Permits only one communications service provider, not the LEC, to install its communications service-related facilities or equipment during the construction phase of the project;
- Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the LEC;
- Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the LEC, in any manner, including, but not limited to, collection through rent, fees, or dues;
- Restricts or limits a LEC's access to the property or enters into an agreement with a communications service provider that restricts or limits an LEC's access to the property or grants incentives or rewards to such owner or developer contingent upon such restriction or limitation; or
- Restricts or limits the types of services that may be provided by a LEC or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by a LEC.

This bill also requires a LEC, with COLR obligations, to give timely notice to the PSC when the above circumstances exist and prevent or impede it from providing basic service to the occupants of a business or residential multi-tenant building or development.

If a LEC is not automatically relieved of its COLR obligation, it may seek a waiver of this obligation from the PSC for good cause based on facts and circumstances of provisioning services to the multi-tenant property. When the COLR petitions the PSC it shall provide notice to the building owner or developer. The PSC has 90 days to act on the petition, and shall implement this paragraph through rulemaking.

If the condition for which the LEFC is relieved of its COLR obligation ceases to exist, and the property's owner or developer provides a written request to the LEC to make service available to customers at the property, and the owner has not arranged and does not intend to arrange with another communications service provider to make service available to customers at the property, the COLR obligation again applies to the LEC, however the LEC may recover from the owner or developer a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire the facilities

to serve the customers initially. Additionally, the COLR shall have a reasonable period of time following the request to make arrangements for service availability. If the conditions that allow the LEC to be relieved of its COLR obligation again exist on a property, the LEC is then again relieved of its COLR obligation.

Nothing in the bill affects the limitations on PSC jurisdiction imposed by s. 364.011 or s. 364.013, F.S.[4]

C. SECTION DIRECTORY:

Section 1 creates s. 364.025(6), F.S., related to carrier of last resort obligations for telecommunications carriers.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

[4] Section 364.011, F.S., provides for exemptions from the PSC's jurisdiction and s. 364.013, provides that broadband and VoIP services are free from state regulation except as delineated in ch. 364, F.S., or in federal law.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to implement the paragraph relating to waivers through rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment. This amendment:

- Changed all references "eligible telecommunications carrier" to the more appropriate "local exchange telecommunication company."
- Narrowed the definition of "communications service."
- Removed a circumstance where companies would be relieved of the COLR obligation where the owner or developer restricts or limits the type of service the COLR can provide.
- Added a provision allowing LECs to petition the PSC for a waiver of the COLR obligation.
- Added a provision for after a COLR is relieved of its obligation, it would again have the COLR obligation.

This bill was then reported favorably with a CS.

On March 30, 2006, the Business Regulation Committee adopted one amendment. This amendment clarified that a COLR is automatically relieved of its obligation when the COLR's access is specifically limited by an agreement between a property owner and a competing carrier. This bill was then reported favorably with a CS.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to telecommunications carriers of last resort; amending s. 364.025, F.S.; providing definitions; providing that a local exchange telecommunications company obligated to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to customers in a multitenant business or residential property under certain circumstances; requiring the local exchange telecommunications company to notify the Public Service Commission when it is relieved of the obligation to provide service; providing for the local exchange telecommunications company to request a waiver of its carrier of last resort obligation from the commission; providing for carrier of last resort obligation to apply when specified conditions cease to exist; providing for effect of the act on the commission's jurisdiction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) is added to section 364.025, Florida Statutes, to read:

364.025 Universal service.--

(6)(a) For purposes of this subsection:

1. "Owner or developer" means the owner or developer of a multitenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.

2. "Communications service provider" means any person or entity providing communications services, any person or entity allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.

3. "Communications service" means voice service or voice replacement service through the use of any technology.

(b) A local exchange telecommunications company obligated by this section to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer thereof:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange

telecommunications company, during the construction phase of the property;

2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;

3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or

4. Enters into an agreement with a communications service provider that grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property.

(c) The local exchange telecommunications company relieved of its carrier of last resort obligation to provide basic local telecommunications service to the occupants or residents of a multitenant business or residential property pursuant to paragraph (b) shall notify the commission of that fact in a timely manner.

(d) A local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1.-4. may seek a waiver of its carrier of last resort obligation from the commission for good cause shown based on the facts and circumstances of

provision of service to the multitenant business or residential property. Upon petition for such relief, notice shall be given by the company at the same time to the relevant building owner or developer. The commission shall have 90 days to act on the petition. The commission shall implement this paragraph through rulemaking.

(e) If all conditions described in subparagraphs (b)1.-4. cease to exist at a property, the owner or developer requests in writing that the local exchange telecommunications company make service available to customers at the property and confirms in writing that all conditions described in subparagraphs (b)1.-4. have ceased to exist at the property, and the owner or developer has not arranged and does not intend to arrange with another communications service provider to make communications service available to customers at the property, then the carrier of last resort obligation under this section shall again apply to the local exchange telecommunications company at the property; however, the local exchange telecommunications company may require that the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially, and the company shall have a reasonable period of time following the request from the owner or developer to make arrangements for service availability. If any conditions described in subparagraphs (b)1.-4. again exist at the property, then paragraph (b) shall again apply.

(f) Nothing in this subsection affects the limitations on commission jurisdiction imposed by s. 364.011 or s. 364.013.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 821 CS Homeownership Assistance Contribution Tax Credit Program
SPONSOR(S): Goodlette
TIED BILLS: **IDEN./SIM. BILLS:** 784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	13 Y, 0 N, w/CS	Olmedillo	Carlson
2) Local Government Council	8 Y, 0 N	Nelson	Hamby
3) Finance & Tax Committee	8 Y, 0 N, w/CS	Rice	Diez-Arguelles
4) Commerce Council		Olmedillo	Randle
5)			

SUMMARY ANALYSIS

This bill increases the amount of tax credits authorized for the Community Contribution Tax Credit Program from $12 million to $13 million. It provides separate annual limitations for tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households, and for donations made to eligible sponsors for all other projects. The bill establishes the annual limitation for homeownership projects at $10 million and the annual limitation for all other projects located in enterprise zones or Front Porch Florida Communities at $3 million.

This bill eliminates the requirement that the Office of Tourism, Trade and Economic Development reserve specified percentages of annual tax credits for particular projects. It also eliminates the requirement that the Florida Housing Finance Corporation be involved in the marketing of the Community Contribution Tax Credit. Changes made by this bill reflect recommendations contained in Senate Interim Project Report 2006-148.

The Revenue Estimating Conference has determined that the bill will result in a loss of ($0.9) million in state revenues and ($ 0.1) million in local revenues in FY 2006-2007 and FY 2007-2008.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill will provide an increased amount of tax credits for persons who donate to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households and for donations made to eligible sponsors for all other projects that qualify under the Community Contribution Tax Credit Program.

B. EFFECT OF PROPOSED CHANGES

Present Situation

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program to encourage private sector participation in revitalization and housing projects. The program offers tax credits, in the form of a refund, to persons who donate to sponsors who have been approved to participate in the program. Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards. Eligible projects include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons.

The Office of Tourism, Trade, and Economic Development (OTTED) is responsible for marketing the program in consultation with the Florida Housing Finance Corporation and other housing and financial intermediaries. OTTED is also responsible for administering the program by reviewing sponsor project proposals and tax credit applications. To date, 167 sponsors/projects have been approved to participate in the program. After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue (DOR).

The tax credits are equal to 50 percent of the amount donated up to $200,000 annually. The tax credit may be applied toward the donor's sales and use, corporate, or insurance premium tax obligations. The taxpayer may only apply the credits toward one tax obligation. Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years. Unused credits against sales taxes may be carried forward for three years.

During the first six months of the fiscal year, OTTED is required to reserve $9.4 million of the allocated credits for low[1] and very-low income[2] household project donations and $2.6 million for other projects.

The Florida Legislature has amended the dollar cap and the expiration date of the program on numerous occasions. The program began with an annual $3 million cap and it is currently $12 million. The expiration of the program has been extended from 2005 to June 30, 2015.

Effect of Proposed Changes

The bill increases the total amount of credits allocated to the Community Contribution Tax Credit Program from $12 million to $13 million annually. It amends ss. 212.08, 220.183 and 624.5105, F.S., respectively, in a substantially identical fashion, to provide new allocations of the available $13 million in tax credits.

First, the bill removes the requirement that OTTED reserve specific amounts during the first six months of the fiscal year for particular project donations. In its place, it requires that $10 million of the tax

credits be reserved for donations made to projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) [1] and (28),[2] F.S., and $3 million be reserved for all other projects.

The bill also eliminates the requirement that OTTED work in consultation with the Florida Housing Finance Corporation to market the Community Contribution Tax Credit Program.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., to increase the amount of available tax credits, provide separate annual limitations for sales tax credits, eliminate the reservation of available tax credits, and renumber sub-paragraphs.

Section 2: Amends s. 220.183, F.S., to increase the amount of available tax credits, provide separate annual limitations for corporate tax credits, and eliminate the reservation of available tax credits.

Section 3: Amends s. 624.5105, F.S., to increase availability of tax credits, provide separate annual limitations for insurance premium tax credits, and eliminate the reservation of available tax credits.

Section 4: Provides that the bill take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-07	FY 2007-2008
General Revenue		
Corporate	($0.1)m	($0.1)m
Sales	($0.8)m	($0.8)m
State Trust	(Indeterminate)	(Indeterminate)
Total	($0.9)m	($0.9)m

2. Expenditures:

None

[1] Section 420.9071(19), F.S., defines "low-income person" or "low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever amount is greatest. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the area's median income adjusted for family size. While occupying the rental unit, a low-income household's annual income may increase to an amount not to exceed 140 percent of 80 percent of the area's median income adjusted for family size.

[2] Section 420.9071(28), F.S., defines "Very-low-income person" or "very-low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 50 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the non-metropolitan median for the state, whichever is greatest. With respect to rental units, the very-low-income household's annual income at the time of initial occupancy may not exceed 50 percent of the area's median income adjusted for family size. While occupying the rental unit, a very-low-income household's annual income may increase to an amount not to exceed 140 percent of 50 percent of the area's median income adjusted for family size.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2006-07	FY 2007-2008
Local Revenues	($0.1)m	($0.1)m
Total	($0.1)m	($0.1)m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the number of low-income homes and other projects that are built and conducted each year.

D. FISCAL COMMENTS:

The table below shows the tax credits granted for housing projects and for other community development projects during the past 10 years. There were significant tax credits unused for the first two years after the cap was increased to $10 million. Subsequently, the entire allocation has been used.

COMMUNITY CONTRIBUTION TAX CREDIT PROGRAM
TAX CREDIT SUMMARY FY 1995/96 – FY 2005/06

FISCAL YEAR	APPROVED APLLICATIONS	HOUSING TAX CREDITS	COMMUNITY DEVELOPMENT TAX CREDITS	TOTAL CREDITS APPROVED	CREDITS REMAINING	ANNUAL ALLOCATION
1995/96	75	$465,542	$1,472,255	$1,937,797	$62,203	$2,000,000
1996/97	69	$1,043,256	$1,018,947	$2,062,203	$-62,203	$2,000,000
1997/98	81	$1,348,500	$651,500	$2,000,000	$0	$2,000,000
1998/99	75	$2,720,441	$2,279,559	$5,000,000	$0	$5,000,000
1999/00	198	$3,764,283	$1,302,178	$5,066,461	$4,933,539	$10,000,000
2000/01	223	$5,320,890	$744,365	$6,065,255	$3,934,745	$10,000,000
2001/02	322	$9,484,489	$515,464	$9,999,953	$47	$10,000,000
2002/03	359	$8,914,456	$1,085,544	$10,000,000	$0	$10,000,000
2003/04	285	$8,622,769	$1,377,231	$10,000,000	$0	$10,000,000
2004/05	251	$8,051,618	$1,948,382	$10,000,000	$0	$10,000,000
2005/06	285	$9,558,883	$2,441,117	$12,000,000	$0	$12,000,000
10 YEAR TOTALS	**2,223**	**$59,295,127**	**$14,836,542**	**$74,131,669**	**$8,868,331**	**$83,000,000**

Source: OTTED

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2006, the Economic Development, Trade and Banking Committee adopted a strike-all amendment that:

- conforms the House bill to the Senate bill, correcting technical errors in the House bill and restoring current law applicable to credit applications and review processes;
- provides for two separate funding pools: one for projects that provide homeownership opportunities for low-income and very-low-income Floridians, capped at $10 million; and another for projects that provide enhanced community development, capped at $3 million (a $1 million total increase from current law); and
- removes language the requires OTTED to reserve a portion of available credits in each pool for the first six months of the year and allow leftover credits to be transferred between pools.

The Finance and Tax Committee adopted a technical amendment on March 31, 2006 to correct a reference to the Office of Tourism, Trade, and Economic Development.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the community contribution tax credit program; amending ss. 212.08, 220.183, and 624.5105, F.S.; increasing the amount of available tax credits against the sales tax, corporate income tax, and insurance premium tax, respectively, for projects under the community contribution tax credit program and providing separate annual limitations for certain projects; revising requirements and procedures for the Office of Tourism, Trade, and Economic Development in granting tax credits under the program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (q) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the

storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(q) Community contribution tax credit for donations.--

1. Authorization.--~~Beginning July 1, 2001,~~ Persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

a. The credit shall be computed as 50 percent of the person's approved annual community contribution.~~;~~

b. The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to the department for the credit as required in sub-subparagraph 3.c. If the annual credit is not fully used through such refund because of insufficient tax payments during the applicable 12-month period, the unused amount may be included in an application for a refund made pursuant to sub-subparagraph 3.c. in subsequent years against the total tax payments made for such year. Carryover credits may be applied for a 3-year period without regard to any time limitation that would otherwise apply under s. 215.26.~~;~~

c. A person may not receive more than $200,000 in annual tax credits for all approved community contributions made in any one year.~~;~~

d. All proposals for the granting of the tax credit require the prior approval of the Office of Tourism, Trade, and Economic Development.~~,~~

e. The total amount of tax credits which may be granted for all programs approved under this paragraph, s. 220.183, and s. 624.5105 is $10 ~~$12~~ million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and $3 million annually for all other projects.~~; and~~

f. A person who is eligible to receive the credit provided for in this paragraph, s. 220.183, or s. 624.5105 may receive the credit only under the one section of the person's choice.

2. Eligibility requirements.--

a. A community contribution by a person must be in the following form:

(I) Cash or other liquid assets;

(II) Real property;

(III) Goods or inventory; or

(IV) Other physical resources as identified by the Office of Tourism, Trade, and Economic Development.

b. All community contributions must be reserved exclusively for use in a project. As used in this sub-subparagraph, the term "project" means any activity undertaken by an eligible sponsor which is designed to construct, improve, or substantially rehabilitate housing that is affordable to low-income or very-low-income households as defined in s. 420.9071(19) and (28); designed to provide commercial, industrial, or public resources and facilities; or designed to

improve entrepreneurial and job-development opportunities for low-income persons. A project may be the investment necessary to increase access to high-speed broadband capability in rural communities with enterprise zones, including projects that result in improvements to communications assets that are owned by a business. A project may include the provision of museum educational programs and materials that are directly related to any project approved between January 1, 1996, and December 31, 1999, and located in an enterprise zone designated pursuant to s. 290.0065. This paragraph does not preclude projects that propose to construct or rehabilitate housing for low-income or very-low-income households on scattered sites. With respect to housing, contributions may be used to pay the following eligible low-income and very-low-income housing-related activities:

(I) Project development impact and management fees for low-income or very-low-income housing projects;

(II) Down payment and closing costs for eligible persons, as defined in s. 420.9071(19) and (28);

(III) Administrative costs, including housing counseling and marketing fees, not to exceed 10 percent of the community contribution, directly related to low-income or very-low-income projects; and

(IV) Removal of liens recorded against residential property by municipal, county, or special district local governments when satisfaction of the lien is a necessary precedent to the transfer of the property to an eligible person, as defined in s. 420.9071(19) and (28), for the purpose of

promoting home ownership. Contributions for lien removal must be received from a nonrelated third party.

c. The project must be undertaken by an "eligible sponsor," which includes:

(I) A community action program;

(II) A nonprofit community-based development organization whose mission is the provision of housing for low-income or very-low-income households or increasing entrepreneurial and job-development opportunities for low-income persons;

(III) A neighborhood housing services corporation;

(IV) A local housing authority created under chapter 421;

(V) A community redevelopment agency created under s. 163.356;

(VI) The Florida Industrial Development Corporation;

(VII) A historic preservation district agency or organization;

(VIII) A regional workforce board;

(IX) A direct-support organization as provided in s. 1009.983;

(X) An enterprise zone development agency created under s. 290.0056;

(XI) A community-based organization incorporated under chapter 617 which is recognized as educational, charitable, or scientific pursuant to s. 501(c)(3) of the Internal Revenue Code and whose bylaws and articles of incorporation include affordable housing, economic development~~,~~ or community development as the primary mission of the corporation;

(XII) Units of local government;

(XIII) Units of state government; or

(XIV) Any other agency that the Office of Tourism, Trade, and Economic Development designates by rule.

In no event may a contributing person have a financial interest in the eligible sponsor.

d. The project must be located in an area designated an enterprise zone or a Front Porch Florida Community pursuant to s. 20.18(6), unless the project increases access to high-speed broadband capability for rural communities with enterprise zones but is physically located outside the designated rural zone boundaries. Any project designed to construct or rehabilitate housing for low-income or very-low-income households as defined in s. 420.0971(19) and (28) is exempt from the area requirement of this sub-subparagraph.

e. ~~(I) For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first $10 million in available annual tax credits and 70 percent of any available annual tax credits in excess of $10 million for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any such reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households.~~

~~(II) For the first 6 months of the fiscal year, the office shall reserve 20 percent of the first $10 million in available annual tax credits and 30 percent of any available annual tax credits in excess of $10 million for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households.~~

(I) ~~(III)~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under sub-sub-subparagraph (I)~~, the Office of Tourism, Trade, and Economic Development shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the ~~available~~ annual tax credits available for those projects

~~reserved under sub-sub-subparagraph (I)~~, the office shall grant the tax credits for those ~~the~~ applications as follows:

(A) If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credits shall be granted in full if the tax credit applications are approved~~, subject to sub-sub-subparagraph (I)~~.

(B) If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted pursuant to sub-sub-sub-subparagraph (A) shall be subtracted from the amount of available tax credits ~~under sub-sub-subparagraph (I)~~, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

~~(C) If, after the first 6 months of the fiscal year, additional credits become available under sub-sub-subparagraph (II), the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

(II) ~~(IV)~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under sub-sub-subparagraph (II)~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on

a first-come, first-served basis for any subsequent eligible applications received before the end of ~~the first 6 months of~~ the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under sub-sub-subparagraph (II)~~, the office shall grant the tax credits for those ~~the~~ applications on a pro rata basis. ~~If, after the first 6 months of the fiscal year, additional credits become available under sub-sub-subparagraph (I), the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

3. Application requirements.--

a. Any eligible sponsor seeking to participate in this program must submit a proposal to the Office of Tourism, Trade, and Economic Development which sets forth the name of the sponsor, a description of the project, and the area in which the project is located, together with such supporting information as is prescribed by rule. The proposal must also contain a resolution from the local governmental unit in which the project is located certifying that the project is consistent with local plans and regulations.

b. Any person seeking to participate in this program must submit an application for tax credit to the office ~~of Tourism, Trade, and Economic Development~~ which sets forth the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. The sponsor shall verify the terms of the application and indicate its receipt of the contribution, which verification must be in writing and accompany the application for tax credit. The person must submit a separate tax credit application to the office for each individual contribution that it makes to each individual project.

c. Any person who has received notification from the office ~~of Tourism, Trade, and Economic Development~~ that a tax credit has been approved must apply to the department to receive the refund. Application must be made on the form prescribed for claiming refunds of sales and use taxes and be accompanied by a copy of the notification. A person may submit only one application for refund to the department within any 12-month period.

4. Administration.--

a. The Office of Tourism, Trade, and Economic Development may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this paragraph, including rules for the approval or disapproval of proposals by a person.

b. The decision of the office ~~of Tourism, Trade, and Economic Development~~ must be in writing, and, if approved, the notification shall state the maximum credit allowable to the person. Upon approval, the office shall transmit a copy of the decision to the Department of Revenue.

c. The office ~~of Tourism, Trade, and Economic Development~~ shall periodically monitor all projects in a manner consistent with available resources to ensure that resources are used in accordance with this paragraph; however, each project must be reviewed at least once every 2 years.

d. The office ~~of Tourism, Trade, and Economic Development~~ shall, in consultation with the Department of Community Affairs~~,~~ ~~the Florida Housing Finance Corporation,~~ and the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

5. Expiration.--This paragraph expires June 30, 2015; however, any accrued credit carryover that is unused on that date may be used until the expiration of the 3-year carryover period for such credit.

Section 2. Paragraph (c) of subsection (1) and paragraph (b) of subsection (2) of section 220.183, Florida Statutes, are amended to read:

220.183 Community contribution tax credit.--

(1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM SPENDING.--

(c) The total amount of tax credit which may be granted for all programs approved under this section, s. 212.08(5)(q), and s. 624.5105 is $10 ~~$12~~ million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and $3 million annually for all other projects.

(2) ELIGIBILITY REQUIREMENTS.--

(b)1. All community contributions must be reserved exclusively for use in projects as defined in s. 220.03(1)(t).

~~2. For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first $10 million in available annual tax credits, and 70 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households.~~

~~3. For the first 6 months of the fiscal year, the office shall reserve 20 percent of the first $10 million in available annual tax credits, and 30 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households.~~

2.~~4.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the Office of Tourism, Trade, and Economic Development shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant the tax credits for those ~~such~~ applications as follows:

a. If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credit shall be granted in full if the tax credit applications are approved~~, subject to the provisions of subparagraph 2~~.

b. If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted under sub-subparagraph a. shall be subtracted from the amount of available tax credits ~~under~~

~~subparagraph 2.~~, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

~~c. If, after the first 6 months of the fiscal year, additional credits become available pursuant to subparagraph 3., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

3.~~5.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 3.~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 3.~~, the office shall grant the tax credits for those ~~such~~ applications on a pro rata basis. ~~If, after the first 6 months of the fiscal year, additional credits~~

~~become available under subparagraph 2., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

Section 3. Paragraph (c) of subsection (1) and paragraph (e) of subsection (2) of section 624.5105, Florida Statutes, are amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.--

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

(c) The total amount of tax credit which may be granted for all programs approved under this section and ss. 212.08(5)(q) and 220.183 is $10 ~~$12~~ million annually for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) and $3 million annually for all other projects.

(2) ELIGIBILITY REQUIREMENTS.--

(e) ~~1. For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first $10 million in available annual tax credits, and 70 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any such reserved annual tax credits~~

~~remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households.~~

~~2. For the first 6 months of the fiscal year, the office shall reserve 20 percent of the first $10 million in available annual tax credits, and 30 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households.~~

1.~~3.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 1.~~, the Office of Tourism, Trade, and Economic Development shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10

business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 1.~~, the office shall grant the tax credits for those ~~the~~ applications as follows:

a. If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credits shall be granted in full if the tax credit applications are approved~~, subject to subparagraph 1~~.

b. If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted under sub-subparagraph a. shall be subtracted from the amount of available tax credits ~~under subparagraph 1.~~, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

~~c. If, after the first 6 months of the fiscal year, additional credits become available under subparagraph 2., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

2.~~4.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s.

420.9071(19) and (28) are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant the tax credits for those ~~the~~ applications on a pro rata basis. ~~If, after the first 6 months of the fiscal year, additional credits become available under subparagraph 1., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 CS Financial Literacy Council
SPONSOR(S): Altman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	12 Y, 0 N, w/CS	Olmedillo	Carlson
2) State Administration Appropriations Committee	8 Y, 0 N	Rayman	Belcher
3) Commerce Council		Olmedillo	Randle
4)			
5)			

SUMMARY ANALYSIS

HB 825 creates the Financial Literacy Council (Council) as an adjunct to the Department of Financial Services (DFS) to provide information and education about financial issues to consumers and small businesses.

The bill provides for purposes, membership, meetings, and powers and duties. It authorizes the Council to seek resources from a variety of sources to support its efforts. The bill requires submission of an annual report beginning on January 1, 2008. The Council may not continue as a governmental entity after December 31, 2011.

For the 2006-07 fiscal year, the bill appropriates $50,000 in nonrecurring funds to the Council, from the Administrative Trust Fund within the Department of Financial Services. The budget authority is contingent upon receipt of grant funds or private contributions by the Council for the purpose of this act.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government--the bill creates a new governmental advisory body, the Financial Literacy Council, and appropriates $50,000 to the Council.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The elected Chief Financial Officer (CFO) is the head of the Department of Financial Services. Among the CFO's responsibilities are:

- Licensing and oversight of insurance agents and agencies;
- Investigating fraud, including identity theft and securities and insurance fraud;
- Overseeing cemeteries and funeral homes that sell pre-need contracts;
- Overseeing the state's accounting and auditing functions, including review of state contracts and safeguarding unclaimed property;
- Monitoring the investment of state funds and managing the deferred compensation program for state employees; and
- Ensuring that businesses have workers' compensation coverage in place for employees.

Within the DFS, the Financial Services Commission, composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture, oversees the Office of Insurance Regulation and the Office of Financial Regulation.

- The Office of Insurance Regulation is responsible for regulation of all insurance companies and risk-bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, and premium financing.
- The Office of Financial Regulation is responsible for overseeing state-chartered banks, credit unions, financial institutions, finance companies, and the securities industry.

Research indicates that some Floridians would benefit from improving their personal finance practices. A statewide survey of adult Floridians conducted in June 2004 by Mason-Dixon Polling & Research Inc. found:

- More than one-third have more debt than savings or investments;
- About 25% are not putting any money aside each month for retirement;
- More than 80% of Floridians have credit cards, and 35% report current debt levels over $5,000;
- While 96% of Floridians review their monthly credit card statements, 23% of Floridians have never reviewed their credit reports;[1] and
- Increasing age and income level tends to be associated with smarter personal finance practices.

In the 12 month period ending December 31, 2004, bankruptcy filings in Florida totaled 85,889. There were 1,183 business filings and 84,706 personal filings.[2] These numbers include filings under chapters 7, 11, 12, and 13 of the Bankruptcy Code.

A few of the organizations which currently provide information and education about financial issues to consumers and small businesses include:

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[1] http://www.yourmoneyyourlife.org/downloads/Mason-Dixon_Survey.pdf. Margin of error +/- 4%.

[2] http:// http://www.uscourts.gov/bnkrpctystats/bankrupt_f2table_dec2004.pdf

- The Florida Council for Economic Education, which is dedicated to improving economic education and financial literacy for students of all ages and abilities throughout the state;[3]
- Small business development centers, which provide management assistance to current and prospective small business owners;[4]
- The Service Corps of Retired Executives, which offers free counseling to small business owners;[5]
- The Florida JumpStart Coalition, which seeks to improve the personal financial literacy of Floridians by focusing on the state's youth by promoting and teaching personal finance skills so that individuals can make informed, responsible financial decisions;[6] and
- Consumer Credit Counseling Service members, which provide free and affordable confidential money management, financial education, budget counseling, and debt management services to consumers.[7]

Effect of Proposed Changes:

The bill creates the Financial Literacy Council (Council), as defined in s. 20.03, F.S., to study financial problems that affect consumers and small businesses and assist DFS in developing financial literacy programs. The Council shall be an adjunct to DFS and subject to s. 20.052, F.S. The bill provides that the Council's goals are:

- Equipping small businesses, young people, working adults, and seniors with the tools and resources they need to make informed financial decisions;
- Helping residents of the state learn more about personal financial issues, including, but not limited to applying for loans, managing debt, making sound investment choices, and saving for retirement;
- Facilitating the sharing of best practices for financial management that are characteristic of highly successful small businesses; and
- Serving as an educational forum for resource planning, financial planning, and management issues for small businesses.

The bill provides that the Council will be made up of the state Chief Financial Officer, or his or her designee, and not more than 9 other members to be appointed by the CFO as follows:

- Six members must be persons with experience in various sectors of the financial industry, such as financial institutions as defined in law, finance, insurance, real estate, and securities.
- At least one member must be a person who is not employed by and is not a representative of the financial industry;
- At least one member must be chosen from a list of three persons submitted to the CFO by a senior advocacy group; and
- At least one member must be chosen from a list of the persons submitted to the CFO by the Florida Council on Economic Education.

The appointed members are to represent urban and rural interests and the ethnic and cultural diversity of the state's population. The chair of the council is to be elected by the council at its first meeting, which shall be called by the CFO. Each member of the Council will serve without compensation, but receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.

The bill requires the Council to study financial problems affecting consumers (particularly young persons, seniors, working adults, and small businesses) due to a lack of knowledge of basic financial issues. The Council is to develop written materials to educate consumers and small businesses about basic financial issues and establish an outreach program by providing education through meetings, seminars, or by web-based media.

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[3] www.fcee.org/main.aspx?id=2
[4] www.sba.gov/sbdc/aboutus.html
[5] www.score.org
[6] www.fljumpstart.org
[7] www.nfcc.org/AboutUs/nfccfactsbckgnd.pdf

The bill allows the Council to apply for and accept funds, grants, gifts, and services from the state, the federal government or any of its agencies, or any other public or private source for the purpose of offsetting any clerical and administrative costs associates with the Council's duties. The bill directs all funds received by the Council to be deposited into the Administrative Trust Fund and provides that the funds are appropriated for use by the Council in carrying out its duties and to defray expenses incurred for administrative duties.

The bill appropriates $50,000 in nonrecurring funds to the Council for the 2006-07 fiscal year, contingent on receipt of private or grant funds by the Council.

Beginning January 1, 2008, the Council is to report annually to the Governor, the Speaker of the House of Representatives, and the President of the Senate on the activities carried out by the Council.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law creating the Financial Literacy Council; providing for the purpose of the Council; providing the composition of the Council; providing the procedures for meetings, record keeping, and compensation of members of the Council; providing powers and duties of the Council; establishing provisions for resources for the council; and providing requirements for reports of the Council.

Section 2: Provides an appropriation of $50,000 in nonrecurring funds to a specific appropriation category, "Financial Literacy Council", to the Council for fiscal year 2006-07, contingent upon receipt of grant funds or private contributions by the Council.

Section 3: Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Financial Services indicates that the Council could apply for grant funds.

2. Expenditures:

	FY 2006-07	FY 2007-08
Recurring		
Administrative Trust Fund Reimbursement per diem and travel	$ 0	$ 15,000
Non-Recurring		
Administrative Trust Fund Florida Literacy Council	$ 50,000	

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides administrative and regulator staff assistance to the Council. Each council member is entitled to reimbursement for per diem and travel expenses (estimated cost, $250 X 15 members X quarterly Meetings = $15,000), however the funding source is not defined in this bill. Currently, the funds appropriated to the Department of Financial Services are not specifically allocated to any particular Budget Entity (BE) or program.

The bill appropriates $50,000 in nonrecurring funds from the Department of Financial Services Administrative Trust Fund to the Council for fiscal year 2006-07, contingent upon receipt of grant funds or private contributions by the Council.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No exercise of rule-making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted a strike-everything amendment to the bill on March 16, 2006. The amendment conformed the bill to its Senate companion bill, removed redundant language, clarified that the members of the council are eligible to receive reimbursement or per diem and travel expenses, and provided that the chair of the council is to be elected at the first meeting of the council called by the Chief Financial Officer.

The staff analysis reflects the CS.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Financial Literacy Council; creating the council; providing purposes; providing for membership; providing for reimbursement for per diem and travel expenses; providing for meetings, procedures, and records; providing powers and duties of the council; providing for resources of the council; requiring that any funds received by the council be deposited in the Department of Financial Services Administrative Trust Fund; providing for expiration of the council; requiring annual reports to the Governor and Legislature; providing a contingent appropriation; providing for construction; providing a limitation on expenditures of certain grant funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Financial Literacy Council.--

(1) CREATION.--A council, as defined in s. 20.03, Florida Statutes, named the Financial Literacy Council, is created as an adjunct to the Department of Financial Services. The council shall be subject to the provisions of s. 20.052, Florida Statutes.

(2) PURPOSE.--The purpose of the council is to study financial problems that affect consumers, particularly small businesses, young people, working adults, and seniors that arise from a lack of basic knowledge of financial issues and to provide recommendations to the Department of Financial Services which will assist the department in developing financial literacy programs and resources and providing a single state resource for financial literacy for the general public in order to empower individuals and businesses to manage their financial matters in order to reduce debt, increase savings, and avoid bankruptcy. All recommendations are subject to approval by the Chief Financial Officer.

(3) COMPOSITION.--

(a) The council shall consist of nine members who shall be appointed by and serve at the pleasure of the Chief Financial Officer. Six members must be persons having experience in various areas of the financial industry, such as financial institutions as defined in s. 655.005, Florida Statutes, finance, insurance, real estate, and securities. One member must be a person who is not employed by and is not a representative of the financial industry. One member must be chosen from a list of three persons submitted to the Chief Financial Officer by a senior advocacy group. One member must be chosen from a list of

three persons submitted to the Chief Financial Officer by the Florida Council on Economic Education. Members shall include persons who represent rural and urban interests and the ethnic and cultural diversity of the state's population.

(b) The council shall meet at the call of the chair, who shall be elected by vote of a majority of the council at its first meeting, which shall be called by the Chief Financial Officer. Five of the initial members appointed to the council shall serve terms of 3 years each. All other members shall be appointed for terms of 4 years. Members shall serve until their successors are appointed. Vacancies shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(c) Council members shall serve without compensation; however, each council member is entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(d) The Department of Financial Services shall provide administrative and staff support to the council.

(4) MEETINGS; PROCEDURES; RECORDS.--

(a) The business of the council shall be presented to the council in the form of an agenda. The agenda shall be set by the Chief Financial Officer and shall include items of business requested by the council members.

(b) A majority of the members constitutes a quorum, and action by a majority of a quorum shall be official.

(c) The minutes for each meeting shall be submitted to the Chief Financial Officer within 14 days after each meeting.

(5) POWERS AND DUTIES.--The council shall:

(a) Study financial problems that affect consumers, particularly young persons, seniors, and working adults, and small businesses which arise from a lack of basic knowledge of financial issues.

(b) Study and make recommendations to the department regarding the creation of a single state resource for consumers and small businesses to contact for financial assistance.

(c) Study and make recommendations as to how the department may help equip small businesses, young people, working adults, and seniors with the tools and resources they need to make informed financial decisions.

(d) Study and make recommendations as to how the department may help residents of this state learn more about personal finance issues, including, but not limited to, personal savings, applying for loans, managing debt, making sound investment choices, and saving for retirement.

(e) Study and make recommendations to the department regarding the development of best practices for financial management which are characteristic of highly successful small businesses.

(f) Study and make recommendations as to how the department can serve as an educational forum for resource planning, financial planning, and management issues for small businesses.

(g) Assist the department in developing written materials that shall be available to educate consumers and small businesses about basic financial issues.

(h) Study and make recommendations to the department regarding the establishment of an outreach program to help educate affected persons through public meetings or seminars or through web-based media.

(6) RESOURCES.--

(a) The council may apply for and accept funds, grants, gifts, and services from the state, the government of the United States or any of its agencies, or any other public or private source for the purpose of defraying clerical and administrative costs as necessary to carry out its duties under this section. All sums received by the council shall be deposited into the Department of Financial Services Administrative Trust Fund. The moneys received and deposited into the trust fund are appropriated for use by the council in carrying out its duties as prescribed by this section.

(b) The council shall seek out and, wherever possible, use the talents, expertise, and resources of citizens within the state, and especially those of the public school, community college, and state university systems, in furtherance of its mission.

(c) The council may procure information and assistance from any state agency, political subdivision, municipal corporation, or public officer.

(d) The council may coordinate with any state agency, any political subdivision, or any school district of the state in the furtherance of its mission.

(7) EXPIRATION.--The council shall cease to exist on December 31, 2011. Upon expiration, any funds remaining in the

Financial Literacy Council account of the Department of Financial Services Administrative Trust Fund shall be appropriated to the department to fund the activities that the department has implemented pursuant to the recommendations of the council.

(8) REPORTS.--Beginning January 1, 2008, the council shall report annually on January 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the activities carried out under this section, including expenditures and funding.

Section 2. For the 2006-2007 fiscal year, the sum of $50,000 in nonrecurring funds is appropriated from the Department of Financial Services Administrative Trust Fund in the specific appropriation category "Financial Literacy Council" to the Financial Literacy Council created by this act. The appropriation is contingent upon prior receipt of grant funds or private contributions by the council for the purposes of this act. This section does not entitle the Financial Literacy Council to expend funds from the Administrative Trust Fund in an amount greater than the amount of grant funds or private contributions received by the council and deposited into the Administrative Trust Fund pursuant to this act.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1135 CS Practice of architecture and interior design
SPONSOR(S): Hukill
TIED BILLS: **IDEN./SIM. BILLS:** CSCSSB 2060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	15 Y, 0 N, w/CS	Livingston	Liepshutz
2) State Administration Appropriations Committee	9 Y, 0 N	Rayman	Belcher
3) Commerce Council		Livingston	Randle
4)			
5)			

SUMMARY ANALYSIS

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design (board) under the Department of Business and Professional Regulation (DBPR). Practitioners must meet licensure requirements in order to legally practice their profession. Architecture is performing services in connection with the design and construction of a structure having the principal purpose of human habitation or use. "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture. "Registered interior designer" or "interior designer" means a natural person who is licensed under this part to provide interior design services.

The bill:

creates a definition of "responsible supervising control" to mean:

- "the exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a licensee hereunder."

By definition, the bill also specifies that "responsible supervising control" does not mean the "review of documents, instruments of service, or any other work requiring the seal and signature of a licensee [architect or interior designer] after such work has been performed by a person not licensed hereunder working outside of the licensee's office." and

authorizes a person who has been licensed as a practitioner by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" or "Interior Designer, Retired", as applicable, but may not otherwise render any professional services.

The bill creates no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Current regulation of professions is carried out by DBPR, in part, by licensing practitioners. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or a commission. Regulation is intended to protect the public by ensuring that licensed professionals meet prescribed standards of education, competency, and practice. Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR.

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design under the DBPR. Practitioners must meet licensure requirements in order to legally practice their profession. Architecture is performing services in connection with the design and construction of a structure having the principal purpose of human habitation or use. "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture.

Interior design is defined in the chapter to mean

> designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects life safety systems pertaining to fire safety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

"Registered interior designer" or "interior designer" means a natural person who is licensed under this part.

Various acts constitute grounds for which the disciplinary actions may be taken, including:

- a Florida-registered architect failing to ensure the responsible supervising control of services or projects, as required by board rule, and
- a Florida-registered interior designer failing to exercise responsible supervisory control over services or projects, as required by board rule.

When the board finds a practitioner guilty of specified acts, it may enter an order imposing one or more of the following penalties:

> (a) Denial of an application for licensure; (b) Revocation or suspension of a license; (c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense and a fine of up to $5,000 for matters pertaining to a material violation of the Florida Building Code as reported by a local jurisdiction; (d) Issuance of a reprimand; (e) Placement of the registered architect on probation for a period of time and subject to such conditions as the board may specify, including requiring the registered architect to attend continuing education courses or to work under the supervision of another registered architect; or (f) Restriction of the authorized scope of practice by the registered architect.

Effect of proposed changes

The bill creates a definition of "responsible supervising control" to mean:

- "the exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a licensee under this part."

By definition, the bill also specifies that "responsible supervising control" does not mean the "review of documents, instruments of service, or any other work requiring the seal and signature of a licensee [architect or interior designer] after such work has been performed by a person not licensed hereunder working outside of the licensee's office."

The bill authorizes a person who has been licensed as a practitioner by the board and who chooses to relinquish or not to renew his or her license may use the title "architect, retired" or "interior designer, retired", as applicable, but may not otherwise render any professional services.

C. SECTION DIRECTORY:

Section 1. Amends s. 481.203, F.S., to define "responsible supervising control."

Section 2. Amends s. 481.223, F.S., to allow the use of the title "architect, retired and interior designer, retired," as applicable.

Section 3. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Business Regulation Committee adopted one strike all amendment which modified the bill in the following manner and reported the bill favorably with committee substitute.

- Removes language in the original bill: defining "administration of construction contracts;" prohibiting construction without an architect providing construction contract administration services; imposing disciplinary actions for certain circumstances; allowing a professional engineer to perform construction contract administration services relative to engineering.
- Defines the term "responsible supervising control."
- Adds the authority for an interior designer to use the title "interior designer, retired."

This bill analysis has been updated to reflect these changes.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the practice of architecture and interior design; amending s. 481.203, F.S.; defining "responsible supervising control"; amending s. 481.223, F.S.; authorizing certain architects to use the title "Architect, Retired" and certain interior designers to use the title "Interior Designer, Retired"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (16) is added to section 481.203, Florida Statutes, to read:

481.203 Definitions.--As used in this part:

(16) "Responsible supervising control" means the exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a person licensed under this part. Review of documents, instruments of service, or any

other work requiring the seal and signature of a person licensed under this part after such work has been performed by a person not licensed under this part working outside the office of the person licensed under this part shall not be deemed responsible supervising control.

Section 2. Paragraphs (a) and (b) of subsection (1) of section 481.223, Florida Statutes, are amended to read:

481.223 Prohibitions; penalties; injunctive relief.--

(1) A person may not knowingly:

(a) Practice architecture unless the person is an architect or a registered architect; however, an architect who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" but may not otherwise render any architectural services;

(b) Practice interior design unless the person is a registered interior designer unless otherwise exempted herein; however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services;

Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1135 W/ CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Council/Committee hearing bill:

Representative(s)Hukill offered the following:

Strike all amendment (with title amendment)

Remove all line(s) after the enacting clause and insert:

Section 1. Subsection (16) is added to section 481.203, Florida Statutes, to read:

481.203 Definitions.--As used in this part:

(16) "Responsible supervising control" means the exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a licensee under this part.

Section 2. Subsection (4) is added to section 481.205, Florida Statutes, to read

481.205 Board of Architecture and Interior Design.--

(4) The board may establish by rule minimum procedures, documentation, and other requirements for indicating evidence of the exercise of responsible supervising control by a person

licensed under this part in connection with work performed both inside and outside the licensee's office.

Section 3. Subsection (1) of section 481.223, Florida Statutes, is amended to read: 481.223 Prohibitions; penalties; injunctive relief.--

(1) A person may not knowingly:

(a) Practice architecture unless the person is an architect or a registered architect; however, a licensed architect who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" but may not otherwise render any architectural services.~~;~~

(b) Practice interior design unless the person is a registered interior designer unless otherwise exempted herein; however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services.

(c) Use the name or title "architect" or "registered architect," or "interior designer" or "registered interior designer," or words to that effect, when the person is not then the holder of a valid license issued pursuant to this part.~~;~~

(d) Present as his or her own the license of another.~~;~~

(e) Give false or forged evidence to the board or a member thereof.~~;~~

(f) Use or attempt to use an architect or interior designer license that has been suspended, revoked, or placed on inactive or delinquent status.~~;~~

(g) Employ unlicensed persons to practice architecture or interior design.~~; or~~

(h) Conceal information relative to violations of this part.

Section 4. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 8-12 and insert:

the term "responsible supervising control"; amending s. 481.205, F.S.; authorizing the Board of Architecture and Interior Design to adopt certain rules; amending s. 481.223, F.S.; authorizing certain architects to use the title "Architect, Retired"; authorizing certain interior designers to use the title "Interior Designer, Retired"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1211 CS Notification Regarding the State Minimum Wage
SPONSOR(S): Fields
TIED BILLS: **IDEN./SIM. BILLS:** SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	12 Y, 0 N, w/CS	Olmedillo	Carlson
2) Transportation & Economic Development Appropriations Committee	20 Y, 0 N, w/CS	McAuliffe	Gordon
3) Commerce Council		Olmedillo	Randle
4)			
5)			

SUMMARY ANALYSIS

This bill creates a new section of law requiring each employer who must pay an employee the Florida minimum wage to display a poster in a conspicuous and accessible place at a worksite indicating the applicable wage. The bill requires the Agency for Workforce Innovation (AWI) to create the required posters in English and in Spanish and make them available to employers on or before December 1st of each year. Under this bill, each poster must contain specific language outlining the restrictions on employers, the rights of employees, and the penalties for non-compliance with Florida's minimum wage law. The bill also provides formatting, font and size requirements for the posters.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: Creates a new law to require posting notice of the state minimum wage.

B. EFFECT OF PROPOSED CHANGES:

Florida Minimum Wage Law

During the 2005 Special Legislative Session (2005B), the Legislature passed, and the Governor approved, SB 18B creating the Florida Minimum Wage Act.[1] This bill implemented the provisions of s. 24, Art. X of the State Constitution which resulted from the passage of Constitutional Amendment #5 on the November 2, 2004, ballot. Senate Bill 18B replicated the provisions of the constitution and added additional provisions to do the following:

- Adopt the U.S. Consumer Price Index for the south region as the applicable index for determining the annual adjustments to the state minimum wage;
- Require the Agency for Workforce Innovation and the Department of Revenue to publish the annually updated minimum wage on their respective websites;
- Require employees to first notify employers before initiating a civil action to enforce their right to receive the state minimum wage;
- Allow employers 15 calendar days to resolve any claims for the unpaid wages before a suit may be filed;
- Limit the damages awarded to employees to only unpaid wages if the court determines the employer acted in good faith and had reasonable grounds for believing that their action was not in violation of the constitution;
- Restrict the court from awarding punitive damages;
- Impose restrictions on class action suits;
- Limit eligibility for the minimum wage to workers who are currently entitled to receive the federal minimum wage under the Fair Labor Standards Act (FLSA) and its associated implementing regulations; and
- Provide that the exemptions outlined in ss. 213 and 214 of FLSA are incorporated into the act by reference.

The Florida Minimum Wage Act does not contain a posting requirement for employers.

States' Minimum Wage Posting Requirement

Currently, several states have minimum wage requirements that differ from the federal minimum wage of $5.15 per hour and $2.13 for tipped employees. As of January 2006, Florida's minimum wage is $6.40 per hour and $3.38 for tipped employees. Eighteen states (including Florida) and the District of Columbia have minimum wages that are higher than the federal minimum wage.[2] Fourteen of those states and the District of Columbia also require employers to post the state minimum wage and related information. The states that have minimum wages higher than the federal wage and adhere to a posting requirement include: Alaska, California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode

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[1] Chapter 2005-353, L.O.F.

[2] Those states include: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington and Wisconsin. Information compiled from U.S. Department of Labor, *Minimum Wage Laws in the States,* http:// www.dol.gov/esa/minwage/america.html. December 2006; National Conference of State Legislatures, *State Minimum Wages,* http://www.ncsl.org/programs/employ/stateminimumwages2006.htm. 6 March 2006.

Island, and Vermont. At least two states, Washington and Wisconsin, recommend that minimum wage information be posted, but do not require it.[3]

Almost all of the states that have a posting requirement provide the posters, free of charge, on their Department of Labor website where they can be downloaded by employers and viewed by the public.

Effects of Proposed Changes
The bill sets forth requirements for AWI and employers with regard to posting the minimum wage.

The bill defines the terms "employer," "employee," and "wage," consistent with the meanings assigned to them by the federal Fair Labor Standards Act. The bill also defines "Florida minimum wage" as the wage an employee is required to pay pursuant to s. 24, Article X of the State Constitution.

The bill requires each employer who must pay Florida's minimum wage to prominently display a poster substantially similar to the one described in the bill, which details the Florida minimum wage, restrictions on employers, rights of employees and penalties for non-compliance.

The bill requires AWI to create and make available, on or before December 1 of each year, posters in English and Spanish regarding the minimum wage. The bill also provides the language that must be included in the posters as follows:

- The minimum wage as of January 1 of each year;
- That the minimum wage is calculated yearly on September 30 using the consumer price index and will take effect each January 1st;
- That retaliation by employers against employees who exercise their rights under the minimum wage law is prohibited. Those rights include:
    - filing a complaint regarding an employer's noncompliance;
    - informing any person about an employer's noncompliance; and
    - informing any person of his or her rights under s. 24, Article X of the State Constitution;
- That the employee must notify his or her employer of a violation and give the employer 15 days to resolve any claims for unpaid wages prior to filing a civil action to recover back wages;
- That an employee may file a civil action against an employer to recover back wages plus damages and attorney's fees;
- That an employer who intentionally violates the minimum wage requirements may be subject to a fine of $1,000 per violation, payable to the state;
- That the Attorney General or other official appointed by the Legislature may bring a civil action to enforce the minimum wage; and
- That further information may be obtained from s. 24, Article X of the State Constitution.

The bill also states that the required poster must be at least 8.5 inches in height by 11 inches in width. The letters of the poster must be conspicuous in size and the letters of the first line must be larger than the letters of any other line. In addition, the letters of the first sentence must be in bold type and larger than the letters in the remaining lines.

C. SECTION DIRECTORY:

Section 1: Creates s. 448.109, F.S., providing specific minimum wage posting requirements.
Section 2: Provides an effective date.

[3] Carrie Campbell, Commerce Committee staff, researched the existence of posting requirements in states having a wage higher than the federal rate.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Whether private businesses incur a cost in relation to this legislation depends on the method AWI chooses to disseminate this information to employers. Providing a free poster that may be downloaded would result in an indeterminable cost to employers who have internet access and the ability to print the posters.

D. FISCAL COMMENTS:

The bill requires AWI to "make available" a poster to employers to post in the workplace regarding the Florida Minimum Wage. AWI estimates that the cost of developing a document, as specified in the proposed legislation, and posting the document to the agency's website to be downloaded and printed by an employer who required to post the document, is approximately $120.00. Should AWI be required to design, print and mail posters to over 460,000 Florida employers, the agency has determined that cost to be a total of $235,600 including printing and postage.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted a strike-everything amendment to the bill on March 23, 2006. The amendment conforms the House bill to its Senate companion bill, making the following changes:

- It creates a new section of law, 448.109, which requires notice of the state minimum wage;
- It requires an employer to display a poster substantially similar to the 8.5 by 11 inch poster specified in the bill in every establishment were employees are employed;
- It removes a reference to filing of minimum wage complaints to the Agency for Workforce Innovation, which does not enforce or prosecute complaints relating to the minimum wage;
- It clarifies in the poster that an employee must meet the notice and 15 day resolution period before filing a civil action to recover back wages;
- It specifies a letter-sized poster to be used by employers; and
- It changes the effective date to January 1, 2007.

At the April 4, 2006 meeting, the Transportation and Economic Development Appropriations Committee approved HB 1211 with one amendment. The amendment clarifies that the notice to employees that must be posted by certain employers must state that the minimum wage for tipped employees is in addition to tips.

CHAMBER ACTION

The Transportation & Economic Development Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to notification regarding the state minimum wage; creating s. 448.109, F.S.; providing definitions; requiring an employer to display posters at worksites to provide employees notice about the state minimum wage; requiring the Agency for Workforce Innovation to make available an updated poster each year; providing for the size and contents of the posters; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 448.109, Florida Statutes, is created to read:

448.109 Notification of the state minimum wage.--

(1) As used in this section, the terms:

(a) "Employer," "employee," and "wage" have the meanings as established under the federal Fair Labor Standards Act and its implementing regulations.

(b) "Florida minimum wage" means the wage that an employer must, at a minimum, pay an employee pursuant to s. 24, Art. X of the State Constitution and implementing law.

(2) Each employer who must pay an employee the Florida minimum wage shall prominently display a poster substantially similar to the one made available pursuant to subsection (3) in a conspicuous and accessible place in every establishment where such employees are employed.

(3)(a) Each year the Agency for Workforce Innovation shall, on or before December 1, create and make available to employers a poster in English and in Spanish which reads substantially as follows:

NOTICE TO EMPLOYEES

The Florida minimum wage is $ (amount) per hour, with a minimum wage of at least $ (amount) per hour for tipped employees, in addition to tips, for January 1, (year), through December 31, (year).

The rate of the minimum wage is recalculated yearly on September 30, based on the Consumer Price Index. Every year on January 1 the new Florida minimum wage takes effect.

An employer may not retaliate against an employee for exercising his or her right to receive the minimum wage. Rights protected by the State Constitution include the right to:

1. File a complaint about an employer's alleged noncompliance with lawful minimum-wage requirements.

2. Inform any person about an employer's alleged noncompliance with lawful minimum-wage requirements.

3. Inform any person of his or her potential rights under Section 24, Article X of the State Constitution and to assist him or her in asserting such rights.

An employee who has not received the lawful minimum wage after notifying his or her employer and giving the employer 15 days to resolve any claims for unpaid wages may bring a civil action in a court of law against an employer to recover back wages plus damages and attorney's fees.

An employer found liable for intentionally violating minimum-wage requirements is subject to a fine of $1,000 per violation, payable to the state.

The Attorney General or other official designated by the Legislature may bring a civil action to enforce the minimum wage.

For details see Section 24, Article X of the State Constitution.

(b) The poster must be at least 8.5 inches by 11 inches and in a format easily seen by employees. The text in the poster must be of a conspicuous size. The text in the first line must be larger than the text of any other line and the text of the first sentence must be in bold type and larger than the text in the remaining lines.

Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 1211 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Commerce Council

Representative(s) Fields offered the following:

Amendment

On line 87, replace the term:

"July"

with the term

"January"

000000

amend 1 to HB 1211

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1367 Contracting Exemptions
SPONSOR(S): Evers
TIED BILLS: **IDEN./SIM. BILLS:** SB 2472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	15 Y, 0 N	Livingston	Liepshutz
2) Local Government Council	7 Y, 0 N	Smith	Hamby
3) Commerce Council		Livingston	Randle
4)			
5)			

SUMMARY ANALYSIS

Part I of chapter 489, F.S., addresses construction contracting. Construction contractors are governed by the Construction Industry Licensing Board (CILB), under the Department of Business and Professional Regulation (DBPR). Part II of chapter 489, F.S., addresses electrical and alarm system contractors who are governed by the Electrical Contractors' Licensing Board (ECLB) under the DBPR. Individuals who practice contracting in Florida must be certified by or registered with the CILB or ECLB, as appropriate.

Currently, an exemption from licensure is allowed for persons who comply with statutorily specified requirements and who are "owners of property when building or improving one or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed $25,000, on such property for the occupancy or use of such owner and not offered for sale or lease." Similar provisions apply to electrical contracting.

The bill increases the construction ceiling from $25,000 to $75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for the occupancy or use of the owner and not offered for sale or lease.

The bill requires the property owner to satisfy any applicable local permitting agency requirements demonstrating that the owner has an understanding of the owner's responsibilities and obligations under the construction statutes. If a person violates the exemption requirements, the bill requires the local permitting agency to withhold final approval of the project, revoke the permit, or pursue any action or remedy for unlicensed activity.

Similarly, the bill increases the owner licensure exemption ceiling for electrical work on commercial buildings from $25,000 to $75,000 and imposes ownership responsibilities and potential penalties.

The bill creates a construction licensure exemption for owners of one-family, two-family or three-family residences for occupancy by the owner or used as rental property. The exemption would apply when repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of the owner of the property or tenant of the owner. The bill limits the exemption to a situation where the property has been damaged by natural causes from an event designated by executive order issued by the Governor declaring the existence of a state of emergency, such as the aftermath of a hurricane.

The bill is not anticipated to have a significant fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/Promote personal responsibilities – The bill increases the construction ceiling from $25,000 to $75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for occupancy or use of the owner and not offered for sale or lease. The bill also increases the owner licensure exemption ceiling for electrical work on commercial buildings from $25,000 to $75,000 and imposes ownership responsibilities and potential penalties in the same manner as for the property owner construction exemption. Additionally, the bill provides an exemption from licensure for certain roofing and reproofing activities under specific circumstances. The bill expands opportunities for property owners to improve their facilities under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Part I of chapter 489, F.S., addresses construction contracting. Construction contractors are governed by the Construction Industry Licensing Board (CILB), under the DBPR. Part II of chapter 489, F.S., addresses electrical and alarm system contractors who are governed by the Electrical Contractors' Licensing Board (ECLB) under the DBPR.

Construction contracting essentially means building or altering a structure, for compensation. Several specific varieties of contracting are set forth in the chapter, each with a license that may be obtained for that activity, such as for roofing, plumbing, etc. Section 489.115, F.S., provides that no person may engage in the business of contracting in the state without first being certified or registered in one or more of the defined contracting categories. The reference to the term license is often statutorily used interchangeably with the terms certificate or registration.

Similar regulatory provisions apply to electrical contracting.

With certain statutorily specified exceptions, individuals who practice contracting in Florida must be certified by or registered with the CILB or ECLB, as appropriate. Certification allows an individual to practice contracting in any jurisdiction in the state. A "certificate" may be issued to a person who makes application, shows appropriate education and experience and passes a state examination. "Registration" allows an individual to practice contracting only in the jurisdiction which issues that individual's local license. The registration is issued by the DBPR upon proof of local licensure. Proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists.

Currently, s. 489.103(7), F.S., provides, in part, for an exemption from licensure as a construction contractor for persons who comply with statutorily specified requirements and who are

> owners of property....when building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed $25,000, on such property for the occupancy or use of such owner and not offered for sale or lease....

The residential exemption allows an unlimited cost of construction for residential property and the commercial exemption caps commercial costs at $25,000.

Statutory regulation of construction contracting has existed for some time.

> Authority for issuance of state and local licenses has been provided by chapter 205, Florida Statutes, for all types of contractors from 1937. This law does not require competency assurance, but is primarily a revenue source which identifies the contractor through a required license. However, many local occupational licensing operations have included examination for competency as a prerequisite to issuance of licenses.[1]

State regulation of general contractors, building contractors, and residential building contractors was initiated in 1967 by chapter 67-110, L.O.F., codified as part II, chapter 468, F.S. This act created the CILB, provided its duties and responsibilities, and, with statutorily specified exemptions, established mandatory statewide certification or locally restricted registration. One of the exemptions, with restrictions, applied to residential property owners when working on their own homes.

The residential exemption language was amended in 1972 and the changes added the provision that owners of commercial property are exempt from licensure when "...building or improving commercial buildings at a cost of under twenty-five thousand dollars ($25,000) on such property..." An additional limitation was also added to restrict the exemption if the residential or commercial property is offered for "lease" in addition to the sale of the property.

Construction activity pursuant to ss. 489.103 (7) and 489.503, F.S., by an owner of the property, must be conducted in accordance with the same standards as a licensed practitioner, such as compliance with appropriate building codes, providing workers' compensation coverage, etc.

Currently, the CILB and ECLB have sole authority to discipline state certified contractors. Local jurisdictions can discipline contractors holding locally issued licenses. In theory, the discipline is then reported to the CILB, who may act against the state registration.

Unlicensed construction contracting, as generally understood, is actually a set of specific violations set forth as paragraphs under s. 489.127(1), F.S., (and similar provisions in s. 489.531, F.S., relating to electrical contracting). This section provides, in part, that no person shall:

- engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority; and
- commence or perform work for which a building permit is required pursuant to part VII of chapter 553, F.S., without such building permit being in effect; or
- willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

This section also provides criminal penalties for unlicensed activity. An unlicensed person who violates applicable prohibitions commits a first degree misdemeanor for a first offense and a felony for subsequent offenses. Any unlicensed person who commits a violation of one of the above provisions during the existence of a state of emergency declared by executive order of the Governor commits a third degree felony.

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR. Among these powers is the authority to enforce unlicensed activity provisions pursuant to s. 455.228, F.S. The DBPR may impose administrative penalties including fines in an amount not to exceed $5,000 against any person not licensed by the DBPR or a regulatory Board within the DBPR and who violates a regulatory statute.

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[1] See Fla. S. Comm. on Govtl. Ops., A Review of Chapter 468, Part II, F.S., Licensing of Construction Industry, (November 1978) (Prepared Pursuant to the Regulatory Reform Act, Chapter 76-168, L.O.F.) (on file with the Business Regulation Committee).

Effect of proposed changes

The bill increases the construction ceiling from $25,000 to $75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for the occupancy or use of the owner and not offered for sale or lease.

The bill requires the property owner to satisfy any applicable local permitting agency requirements demonstrating that the owner has an understanding of the owner's responsibilities and obligations under the construction statutes. If a person violates the exemption requirements, the bill requires the local permitting agency to withhold final approval of the project, revoke the permit, or pursue any action or remedy for unlicensed activity.

Similarly, the bill increases the owner licensure exemption ceiling for electrical work on commercial buildings from $25,000 to $75,000 and imposes ownership responsibilities and potential penalties in the same manner as for the property owner construction exemption.

The bill creates a construction licensure exemption for owners of residential rental property relating to roofing and reroofing after the issuance of an Executive Order by the Governor declaring the existence of a state of emergency. The exemption would apply when repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of the owner of the property or tenant of the owner. The bill limits the exemption to a situation where the property has been damaged by natural causes from an event designated by executive order issued by the Governor declaring the existence of a state of emergency, such as the aftermath of a hurricane.

C. SECTION DIRECTORY:

Section 1. Amends s. 489.103, F.S., to increase the construction ceiling from $25,000 to 75,000 and imposes ownership responsibilities and potential penalties; creates an additional construction licensure exemption for owners of property relating to roofing and reroofing contracts.

Section 2. Amends s. 489.503, F.S., to increase the construction ceiling from $25,000 to $75,000 and imposes ownership responsibilities and potential penalties.

Section 3. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Not anticipated to be significant.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands opportunities for property owners to improve their facilities under certain circumstances.

D. FISCAL COMMENTS:

According to DBPR, "There is no fiscal impact on the department as the bill merely expands the parameters of certain existing licensure exemptions."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to contracting exemptions; amending ss. 489.103 and 489.503, F.S.; revising exemptions for certain owners of property from certain contracting provisions; increasing maximum construction costs allowed for exemption; requiring owners of property to satisfy certain local permitting agency requirements; providing for penalties; providing an exemption for owners of property damaged by certain natural causes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.--This part does not apply to:

(7) Owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors:~~,~~

(a) When building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed $75,000 ~~$25,000~~, on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of any such structure by the owner-builder within 1 year after completion of same

creates a presumption that the construction was undertaken for purposes of sale or lease.

(b) When repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of such owner or tenant of the owner and not offered for sale within 1 year after completion of the work and when the property has been damaged by natural causes from an event recognized as an emergency situation designated by executive order issued by the Governor declaring the existence of a state of emergency as a result and consequence of a serious threat posed to the public health, safety, and property in this state.

This subsection does not exempt any person who is employed by or has a contract with such owner and who acts in the capacity of a contractor. The owner may not delegate the owner's responsibility to directly supervise all work to any other person unless that person is registered or certified under this part and the work being performed is within the scope of that person's license. For the purposes of this subsection, the term "owners of property" includes the owner of a mobile home situated on a leased lot. To qualify for exemption under this subsection, an owner must personally appear and sign the building permit application and must satisfy local permitting agency requirements, if any, proving that the owner has a complete understanding of the owner's obligations under the law as specified in the disclosure statement in this section. If any person violates the requirements of this subsection, the local

permitting agency shall withhold final approval, revoke the permit, or pursue any action or remedy for unlicensed activity against the owner and any person performing work that requires licensure under the permit issued. The local permitting agency shall provide the person with a disclosure statement in substantially the following form:

Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own contractor with certain restrictions even though you do not have a license. You must provide direct, onsite supervision of the construction yourself. You may build or improve a one-family or two-family residence or a farm outbuilding. You may also build or improve a commercial building, provided your costs do not exceed $75,000 ~~$25,000~~. The building or residence must be for your own use or occupancy. It may not be built or substantially improved for sale or lease. If you sell or lease a building you have built or substantially improved yourself within 1 year after the construction is complete, the law will presume that you built or substantially improved it for sale or lease, which is a violation of this exemption. You may not hire an unlicensed person to act as your contractor or to supervise people working on your building. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal

licensing ordinances. You may not delegate the responsibility for supervising work to a licensed contractor who is not licensed to perform the work being done. Any person working on your building who is not licensed must work under your direct supervision and must be employed by you, which means that you must deduct F.I.C.A. and withholding tax and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.

Section 2. Subsection (6) of section 489.503, Florida Statutes, is amended to read:

489.503 Exemptions.--This part does not apply to:

(6) An owner of property making application for permit, supervising, and doing the work in connection with the construction, maintenance, repair, and alteration of and addition to a single-family or duplex residence for his or her own use and occupancy and not intended for sale or an owner of property when acting as his or her own electrical contractor and providing all material supervision himself or herself, when building or improving a farm outbuilding or a single-family or duplex residence on such property for the occupancy or use of such owner and not offered for sale or lease, or building or improving a commercial building with aggregate construction costs of under $75,000 ~~$25,000~~ on such property for the occupancy or use of such owner and not offered for sale or lease. In an action brought under this subsection, proof of the sale or lease, or offering for sale or lease, of more than one such structure by the owner-builder within 1 year after

completion of same is prima facie evidence that the construction was undertaken for purposes of sale or lease. This subsection does not exempt any person who is employed by such owner and who acts in the capacity of a contractor. For the purpose of this subsection, the term "owner of property" includes the owner of a mobile home situated on a leased lot. To qualify for exemption under this subsection, an owner shall personally appear and sign the building permit application and must satisfy local permitting agency requirements, if any, proving that the owner has a complete understanding of the owner's obligations under the law as specified in the disclosure statement in this section. If any person violates the requirements of this subsection, the local permitting agency shall withhold final approval, revoke the permit, or pursue any action or remedy for unlicensed activity against the owner and any person performing work that requires licensure under the permit issued. The local permitting agency shall provide the owner with a disclosure statement in substantially the following form:

Disclosure Statement

State law requires electrical contracting to be done by licensed electrical contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own electrical contractor even though you do not have a license. You may install electrical wiring for a farm outbuilding or a single-family or duplex residence. You may install electrical wiring in a

commercial building the aggregate construction costs of which are under $75,000 ~~$25,000~~. The home or building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease more than one building you have wired yourself within 1 year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of this exemption. You may not hire an unlicensed person as your electrical contractor. Your construction shall be done according to building codes and zoning regulations. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances.

Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1367**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill:

Representative(s) Evers offered the following:

Amendment (with directory and title amendments)

Between lines 152-153 insert:

Section 3. Paragraph (b) of subsection (1) of section 489.128, F.S., is amended to read:

489.128 Contracts entered into by unlicensed contractors unenforceable.-

(1)

(b) For purposes of this section, an individual or business organization may ~~shall~~ not be considered unlicensed for failing to have an occupational license certificate issued under the authority of chapter 205. A business organization may ~~shall~~ not be considered unlicensed for failing to have a certificate of authority as required by ss. 489.119 and 489.127. For purposes of this section, a business organization entering into the contract may not be considered unlicensed if, before the date established by paragraph (c), an individual possessing a license required by this part concerning the scope of the work

to be performed under the contract had submitted an application for a certificate of authority designating that individual as a qualifying agent for the business organization entering into the contract, and the application was not acted upon by the department or applicable board within the applicable time limitations imposed by s. 120.60.

Section 4. Section 3 is intended to be remedial in nature and to clarify existing law. Section 3 applies retroactively to all actions, including any action on a lien or bond claim, initiated on or after, or pending as of, July 1, 2006. If the retroactivity of any provision of section 3 or its retroactive application to any person or circumstance is held invalid, the invalidity does not affect the retroactivity or retroactive application of other provisions of section 3.

========== T I T L E A M E N D M E N T ==========

On line 9 after the semi-colon insert:

amending s. 489.128, F.S.; providing that a business organization entering into a construction contract is not deemed unlicensed under certain conditions; providing for retroactive application;